

EXHIBIT 38

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,

v.

Civil Action No.

SHUTTERSTOCK, INC., et al.

1:22-cv-00905-GHW

Defendants.

VIDEOCONFERENCE DEPOSITION OF HEATHER SHIMMIN IN HER
INDIVIDUAL CAPACITY AND AS 30(b)(6) CORPORATE
REPRESENTATIVE FOR SHUTTERSTOCK, INC.

DATE: Tuesday, September 20, 2022

TIME: 10:04 a.m.

LOCATION: Remote Proceeding
Queens, NY

REPORTED BY: Chanyri Figueroa Monsanto,
Notary Public

JOB NO.: 5466687

PAGE 202 IS CONFIDENTIAL

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF ELLIOT MCGUCKEN:

SCOTT ALAN BURROUGHS, ESQUIRE

(by videoconference)

Doniger Burroughs

603 Rose Avenue

Venice, CA 90291

scott@donigerlawfirm.com

ON BEHALF OF DEFENDANT SHUTTERSTOCK, INC. AND

HEATHER SHIMMIN:

ELEANOR M. LACKMAN, ESQUIRE

(by videoconference)

Mitchell Silberberg & Knupp LLP

437 Madison Avenue

25th Floor

New York, NY 10022

eml@msk.com

ALSO PRESENT:

Laura Zaharia, Esquire, Doniger Burroughs

(by videoconference)

Andrew Raff, Esquire, Shutterstock

(by videoconference)

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QUESTIONS REFUSED TO ANSWER

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1 H. SHIMMIN

2 THE REPORTER: Good morning. My
3 name is Chanyri Figueroa; I am a reporter
4 assigned by Veritext to take the record of
5 this proceeding. We are now on the record
6 at 10:04 a.m.

7 This is the deposition of Heather
8 Shimmin taken in the matter of Elliot
9 McGucken vs. Shutterstock Inc. on
10 September 20, 2022.

11 I am a notary authorized to take
12 acknowledgments and administer oaths in
13 New York. Parties agree that I will swear
14 in the witness remotely outside of her
15 presence.

16 Additionally, absent an objection on
17 the record before the witness is sworn,
18 all parties and the witness understand and
19 agree that any certified transcript
20 produced from the recording virtually of
21 this proceeding:

22 - is intended for all uses permitted
23 under applicable procedural and
24 evidentiary rules and laws in the same
25 manner as a deposition recorded by

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2 stenographic means; and

3 - shall constitute written

4 stipulation of such.

5 At this time will everyone in
6 attendance please identify yourself for
7 the record.

8 MR. BURROUGHS: For the plaintiff,
9 Scott Burroughs and Laura Zaharia.

10 MS. LACKMAN: The defendant and the
11 witness, Eleanor Lackman. With me is
12 Andrew Raff, in-house counsel at
13 Shutterstock. I'm with Mitchell
14 Silberberg & Knupp.

15 THE REPORTER: Thank you. Hearing no
16 objection, I will now swear in the
17 witness. Please raise your right hand.

18 WHEREUPON,

19 HEATHER SHIMMIN,
20 called as a witness, and having been first
21 duly sworn to tell the truth, the whole
22 truth, and nothing but the truth, was
23 examined and testified as follows:

24 THE REPORTER: Thank you. You may
25 begin.

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EXAMINATION

BY MR. BURROUGHS:

Q Okay. Can you state and spell your name for the record, please?

A Sure. It's Heather Shimmin.
H-E-A-T-H-E-R S-H-I-M-M-I-N.

Q Fantastic. And where are you located today?

A I'm in Queens, New York.

Q Okay. Are you at your house?

A Yes.

Q Okay. And you're looking at a laptop or desktop?

A A laptop.

Q And is there anything on the screen other than my face and the faces that you see in this gallery?

A Nope.

Q Okay. You have any notes or anything around you there on the couch?

A No. Just my glasses.

Q And do you consider yourself a photographer, personally?

A Yeah.

1 H. SHIMMIN

2 Q Okay. So you may have heard a
3 colloquy between the attorneys before this
4 session. You have been produced as what
5 we call a 30(b)(6) witness to testify on
6 behalf of the company Shutterstock. Do
7 you understand that?

8 A Yes.

9 Q And throughout the day, I may
10 also ask you questions in your personal
11 capacity. Do you understand that?

12 A Yes.

13 Q Okay. And when I do that, I'll
14 often ask, "Well, personally, is this the
15 case," or I'll make some indication that
16 I'm referring to your personal experience
17 as opposed to your company experience.
18 Does that make sense?

19 A Yes.

20 Q Okay. Have you ever been
21 deposed before?

22 A Yes.

23 Q How many times?

24 A Two times before.

25 Q Okay. And were both of those

1 H. SHIMMIN

2 cases cases where photographers or
3 copyright holders were suing Shutterstock
4 for infringement?

5 MS. LACKMAN: Objection. Calls for a
6 legal interpretation.

7 THE WITNESS: It was -- for a
8 Shutterstock case.

9 BY MR. BURROUGHS:

10 Q Okay. What were the allegations
11 in the first deposition that you gave?

12 MS. LACKMAN: Objection. Calls for a
13 legal interpretation. To the extent it
14 also calls for disclosure of privileged
15 information that may relate to the case.

16 BY MR. BURROUGHS:

17 Q Go ahead.

18 MS. LACKMAN: Well, if you feel that
19 you cannot answer -- you can describe
20 it -- I want to do this in a way that
21 makes sense. You can describe generally
22 what the case was about, but otherwise, if
23 your understanding comes from counsel, I
24 want to make sure that the privilege is
25 maintained.

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2 THE WITNESS: My understanding comes
3 from counsel.

4 BY MR. BURROUGHS:

5 Q Were they both copyright
6 infringement cases?

7 MS. LACKMAN: You can answer that.

8 THE WITNESS: Yes.

9 MS. LACKMAN: And it was a single
10 case, so.

11 BY MR. BURROUGHS:

12 Q Okay. Do you recall who the
13 plaintiff was in that case?

14 A I do.

15 Q And who is that?

16 A I don't know if I'm able to
17 share that information.

18 Q Your attorney will get into the
19 admonitions -- the objections in a second,
20 but your attorney will potentially
21 instruct you from time to time not to
22 answer things. Unless she does or unless
23 you believe there's some other reason not
24 to, you should respond.

25 MS. LACKMAN: Yeah. I agree with

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2 that. If you remember the plaintiff's
3 name, you can answer.

4 THE WITNESS: Okay. Just making
5 sure --

6 THE REPORTER: What was the name?

7 THE WITNESS: Itasca -- I-T-A-S-C-A
8 Images.

9 BY MR. BURROUGHS:

10 Q Okay. And can you estimate for
11 me when that deposition took place?

12 A Maybe two months ago. I don't
13 recall the exact date.

14 Q Okay, so relatively recently,
15 but I'll still go over the ground rules
16 just to refresh your recollection. You're
17 doing fantastic so far by letting me
18 finish my question before you provide a
19 response, and by providing verbal
20 responses as opposed to uh-huhs or head
21 nods. Extremely important that you do
22 allow me to finish my questions, that you
23 do provide those verbal responses, because
24 the court reporter's writing down
25 everything that you and I say, and you

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2 will have a chance to review what she's
3 writing down here in a transcript, but if
4 you make changes to that transcript that
5 are material, such as changing a yes to a
6 no, or a blue to a red, I can comment on
7 that at time of trial in front of the
8 jury, and it may impact your credibility.
9 So it's important for you to listen to my
10 question, understand it, and only answer
11 if you understand it. Okay?

12 A Okay.

13 Q And there may come -- from time
14 to time, your attorney may interpose
15 objections or instructions. If they're
16 objections, she's just making those for
17 the records, so you should still respond.
18 If she instructs you not to answer on some
19 basis, you can take that instruction and
20 not respond. Okay?

21 A Okay.

22 Q And I'll ask you, when she makes
23 that objection, if you choose to take that
24 objection or instruction and not respond.

25 A Okay.

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2 Q Okay. Throughout the session I
3 may ask you for estimates from time to
4 time. You may not remember an exact
5 number or date, such as the date of your
6 deposition that we just mentioned, but I
7 am entitled to your best estimate. You
8 understand what an estimate is?

9 A Yes.

10 Q Okay. Is there any reason why
11 you wouldn't be able to give your best
12 testimony today, such as lack of sleep,
13 drugs, alcohol in the last 24 hours,
14 anything like that?

15 A Nope.

16 Q Other than speaking with your
17 attorney, what did you do to prepare for
18 today's deposition?

19 A I met with Counsel and looked
20 over some documents.

21 Q What documents did you review?

22 A Oh, I don't know exactly. Just
23 related to the case.

24 Q Okay. Do you recall any of the
25 documents you reviewed?

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2 A Not specifically.

3 Q Okay. Do you recall generally?

4 A Yeah, generally.

5 Q Okay. What do you recall
6 generally?

7 A Letters received. The -- our
8 responses to the claims.

9 Q Okay. And when you say letters
10 received, are you referring to letters
11 from the photographer that's the plaintiff
12 in this case, or his counsel?

13 A Yes.

14 Q Okay. And when you say
15 responses, are you referring to
16 Shutterstock's responses to those letters?

17 A Yes.

18 Q Okay. Do you recall reviewing
19 anything else, generally or specifically?

20 A No.

21 Q Okay. Were you asked personally
22 at any time to collect documents to turn
23 over to your lawyers in connection with
24 this case?

25 A No, I was not.

1 H. SHIMMIN

2 Q Okay. Do you know if anyone at
3 Shutterstock was?

4 A I am sure they were, I just
5 wanted personally involved in that
6 process.

7 Q Are you aware of anyone that was
8 asked to collect documents for this case?

9 A Not specifically.

10 Q Okay. Generally?

11 A No. I don't deal with that
12 side.

13 Q Okay. Other than your
14 attorneys, have you communicated with
15 anyone regarding the allegations in this
16 case?

17 A No.

18 Q Okay. Have you ever had a
19 conversation with anyone at Shutterstock
20 regarding this case?

21 A No.

22 Q Have you ever had a conversation
23 with Mr. Raff regarding this case?

24 A Yes.

25 Q And when did that occur?

1 H. SHIMMIN

2 A We chatted this morning.

3 Q What about?

4 MS. LACKMAN: You can give a general
5 description, but obviously Mr. Raff is in-
6 house counsel, and I will state for the
7 record that I was also on the phone call.
8 So the discussion was privileged. But if
9 you want to describe -- the nature of the
10 call, then that's fine.

11 THE WITNESS: Okay. Just generally
12 if I had any questions or just a general
13 pep talk.

14 BY MR. BURROUGHS:

15 Q Okay. Have you ever
16 communicated with Dr. Elliot McGucken?

17 A Not to my knowledge.

18 Q Okay. Have you ever
19 communicated with any company to which
20 Shutterstock licensed Dr. McGucken's
21 photography?

22 A I believe I had one request for
23 a proof of license letter.

24 Q Do you recall who that was from?

25 A I do not.

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2 Q And did you respond to that
3 request?

4 A I believe I provided them with a
5 license confirmation letter.

6 Q Okay. And can you estimate for
7 me when that took place?

8 A I'm not sure exactly. It may
9 have been in March of 2021. I don't
10 recall specifically.

11 Q Is your best estimate March of
12 2021?

13 A That's my best guess, yeah.

14 Q Or best estimate?

15 A Sure --

16 Q I don't want you to guess, but I
17 do want you to provide estimates, and I'm
18 entitled to receive estimates, so I'll
19 give an example. If I was to ask you,
20 "When was the last time you went to
21 McDonald's?" you might not remember the
22 exact day, but you know that you went
23 there at some point. You remember from
24 your personal experience when that was.
25 So you give me an estimate. If I ask you

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2 the last time I went to McDonald's, you
3 have no idea what I've done or you have no
4 personal experience about when I go to
5 McDonald's, so you'd be guessing as to
6 when I went to McDonald's. You understand
7 the difference between an estimate and a
8 guess?

9 A Yes.

10 Q Okay. So I don't want your best
11 guess, but I do want your best estimate,
12 okay?

13 A All right. That's fine.

14 Q All right. So is it your best
15 estimate that you communicated with that
16 licensee in March of 2021?

17 A Yes.

18 Q Okay. And other than that
19 interaction, have you communicated with
20 any of the other licensees for the
21 McGucken photography?

22 MS. LACKMAN: Objection, foundation.

23 THE REPORTER: What was the answer?

24 MS. LACKMAN: Yeah, you can answer.

25 THE WITNESS: I don't believe I have.

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2 BY MR. BURROUGHS:

3 Q And what's your understanding of
4 the claims that Dr. McGucken is making
5 against Shutterstock?

6 MS. LACKMAN: Objection to the extent
7 this calls for a legal interpretation and
8 that it may involve disclosure of
9 communications with Counsel. If you have
10 an understanding generally in a couple of
11 words the nature of the claim,
12 independently, then that's fine. Other
13 than that, I would submit that this would
14 disclose privileged communications.

15 THE WITNESS: My understanding of
16 this case comes from Counsel. So I cannot
17 answer the question.

18 BY MR. BURROUGHS:

19 Q Is it fair to say that Dr.
20 McGucken is alleging that Shutterstock
21 licensed his photography or offered to
22 license his photography without his
23 consent?

24 MS. LACKMAN: Objection. Compound.
25 Vague.

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2 THE WITNESS: I believe he's alleging
3 that, without his permission, content was
4 on the site.

5 BY MR. BURROUGHS:

6 Q Okay. And do you dispute those
7 allegations or believe them to be untrue?

8 MS. LACKMAN: Objection. Calls for
9 legal conclusion. Calls for legal
10 opinion. Are you asking also in her
11 personal capacity or Shutterstock's
12 capacity? Because if it's in
13 Shutterstock's capacity, it's outside the
14 scope.

15 BY MR. BURROUGHS:

16 Q Go ahead.

17 MS. LACKMAN: If you understand the
18 question.

19 THE WITNESS: My understanding of
20 your question is does Shutterstock believe
21 that the images were infringing on
22 McGucken's work? And my answer would be I
23 have not seen evidence to prove that he is
24 the copyright holder. So I can't say. I
25 don't know.

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2 BY MR. BURROUGHS:

3 Q Did Shutterstock license Dr.
4 McGucken's photographs or the photographs
5 that he claims to own to third parties?

6 MS. LACKMAN: Objection. Calls for a
7 legal conclusion.

8 THE WITNESS: Some of his images were
9 licensed.

10 THE REPORTER: I'm sorry?

11 THE WITNESS: Oh, I'm sorry. Some of
12 his images were licensed -- of those
13 images were licensed.

14 BY MR. BURROUGHS:

15 Q And were they licensed by
16 Shutterstock to third parties?

17 MS. LACKMAN: Same objection. Calls
18 for a legal interpretation.

19 BY MR. BURROUGHS:

20 Q Go ahead.

21 A Yes.

22 Q And was Shutterstock paid for
23 those licenses?

24 MS. LACKMAN: Objection. Calls for
25 speculation.

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2 THE WITNESS: Yes. Shutterstock
3 received money for some of those licenses.

4 BY MR. BURROUGHS:

5 Q Can you estimate for me the
6 range of those payments?

7 A I believe Shutterstock made
8 about \$2100.

9 Q And can you estimate for me how
10 many licenses Shutterstock granted for the
11 photos claimed to be owned by Dr.
12 McGucken?

13 MS. LACKMAN: Objection to the extent
14 it misstates testimony. You can answer.

15 THE WITNESS: I believe it was about
16 930.

17 BY MR. BURROUGHS:

18 Q So 930 licenses for the Dr.
19 McGucken photography at issue, is that
20 correct?

21 MS. LACKMAN: Same objection.

22 THE WITNESS: The images at issue,
23 yes.

24 BY MR. BURROUGHS:

25 Q And has Shutterstock contacted

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1 H. SHIMMIN

2 any of those 930 licensees and advised
3 them of Dr. McGucken's claims?

4 MS. LACKMAN: Objection. Compound.

5 THE WITNESS: Yes.

6 BY MR. BURROUGHS:

7 Q How many?

8 A All of the third parties who
9 held a license.

10 Q Okay. And can you estimate for
11 me when that occurred?

12 A I'm sorry, I'm drawing a blank.
13 I don't know. I don't remember.

14 Q Did it occur in 2022?

15 A I hesitate to say because I had
16 a complete -- I don't recall. I don't
17 want to misspeak.

18 Q Did it occur in June or July of
19 2022?

20 MS. LACKMAN: Objection. Asked and
21 answered.

22 THE WITNESS: It's possible. I
23 honestly don't recall.

24 BY MR. BURROUGHS:

25 Q So as you sit here today, you

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1 H. SHIMMIN

2 have no understanding as to an estimate as
3 to when those notices went to the third
4 parties, correct?

5 A I don't believe I can give a
6 reliable estimation for it. We'll just
7 say I don't recall.

8 Q And the notices that were sent
9 to the third-party licensees, what did
10 they say?

11 MS. LACKMAN: Objection to the extent
12 it's a compound.

13 THE WITNESS: We sent a letter that
14 says, essentially, "We have on record that
15 you have licensed image ID X. Because
16 there is a legal issue with this image, we
17 request that you cease using this image,
18 and if you are currently using it in some
19 capacity, let us know." And we apologized
20 for the inconvenience.

21 BY MR. BURROUGHS:

22 Q Okay. And before those went
23 out, had Shutterstock communicated with
24 any of those licensees and told them that
25 the claims by Dr. McGucken were false?

1 H. SHIMMIN

2 MS. LACKMAN: Objection. Compound.
3 Foundation.

4 THE WITNESS: Not to my knowledge.

5 BY MR. BURROUGHS:

6 Q And prior to the notices that
7 you just referenced going out, had
8 Shutterstock contacted any of those
9 licensees to advise them that there were
10 no issues with the license?

11 A -- Shutterstock wasn't --

12 MS. LACKMAN: -- no, I just said same
13 objections.

14 THE WITNESS: Shutterstock would not
15 write to a client to say that there was
16 not an issue with an image or --

17 BY MR. BURROUGHS:

18 Q What was the final word there?

19 A Asset.

20 Q Does Shutterstock refer to
21 photographs as, "Assets," from time to
22 time?

23 A Shutterstock would refer to an
24 asset as anything that could be licensed.
25 So it could be a video, it could be an

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2 illustration, could be a vector. Could be
3 a photo.

4 Q Okay. Before Shutterstock sent
5 those notices to the licensees advising
6 them of this dispute, had any of those
7 licensees contacted Shutterstock about Mr.
8 McGucken's claims?

9 MS. LACKMAN: Objection. Outside of
10 the scope.

11 THE WITNESS: The only thing I am
12 aware of is I had one license confirmation
13 request that I gave to the client.

14 BY MR. BURROUGHS:

15 Q Okay. And what did you give to
16 that client?

17 MS. LACKMAN: Objection. Vague.

18 THE WITNESS: I sent an email with an
19 attachment of the letter. I said, "Here
20 is your requested license confirmation.
21 If you need anything else, please let me
22 know."

23 BY MR. BURROUGHS:

24 Q So is it fair to say you were
25 confirming to them that the license you

1 H. SHIMMIN

2 had granted was valid?

3 MS. LACKMAN: Objection. Calls for a
4 legal conclusion. No foundation. Assumes
5 facts not in evidence.

6 THE WITNESS: No. The letter is just
7 saying that an image was licensed with
8 this license on this date by this client.

9 BY MR. BURROUGHS:

10 Q Do you know why that client had
11 reached out to Shutterstock for the
12 confirmation?

13 MS. LACKMAN: Objection. Calls for
14 speculation.

15 THE WITNESS: I don't recall
16 specifically this instant, but there are
17 many different reasons why a client would
18 ask for a letter.

19 BY MR. BURROUGHS:

20 Q And what are those?

21 A Oh, it could be, for example,
22 Amazon requires license confirmations of
23 like artwork they use on a product, for
24 example. It could be like another place
25 like eBay. It's not only infringement

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2 would be a reason why.

3 Q And was the attachment that you
4 sent a confirmation of the license terms
5 between Shutterstock and this licensee?

6 MS. LACKMAN: Objection. Calls for a
7 legal interpretation. Mischaracterizes
8 the document.

9 THE WITNESS: It generally would talk
10 about high-level things permitted by
11 whatever the license type they purchased
12 on a high level.

13 BY MR. BURROUGHS:

14 Q And are the licenses directly
15 between Shutterstock and their licensees?

16 MS. LACKMAN: Objection. Vague.
17 Calls for legal interpretation.

18 THE WITNESS: Generally. There's
19 nuances, but generally it's between the
20 licensee and Shutterstock.

21 BY MR. BURROUGHS:

22 Q Okay. And so is it fair to say
23 that the attachment that you sent to this
24 licensee for the McGucken photograph
25 confirmed the terms of the license between

1 H. SHIMMIN

2 Shutterstock and the licensee?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. Documents not in evidence.
5 Calls for speculation.

6 BY MR. BURROUGHS:

7 Q Go ahead.

8 A I would say no, because the
9 terms of the license are between
10 Shutterstock and the licensees found in
11 the details of the actual licensing
12 agreement. So this is just a higher-
13 level, "Yes, they have this type of
14 license."

15 Q I see. So it's fair to say that
16 there is a licensing agreement between
17 Shutterstock and its licensees for the
18 McGucken photographs, correct?

19 MS. LACKMAN: Objection. Calls for
20 legal interpretation. Vague. Compound.
21 As to 900 or whatever, how many images
22 we're talking about in this case. You can
23 answer if you know.

24 THE WITNESS: I would just say
25 generally the terms of the license are

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2 found on the site, and this letter doesn't
3 necessarily go into the degree of what
4 that license is. It's just saying we have
5 a record that this client purchased a kind
6 of license or image.

7 BY MR. BURROUGHS:

8 Q And they purchased a license
9 from Shutterstock, correct?

10 MS. LACKMAN: Objection. Calls for
11 legal conclusion.

12 THE WITNESS: They got it through
13 Shutterstock, yes.

14 BY MR. BURROUGHS:

15 Q For the 930 licenses that you
16 mentioned, were all of those licenses
17 between Shutterstock and the licensee?

18 MS. LACKMAN: Objection. Asked and
19 answered. Calls for legal interpretation.
20 Vague.

21 THE WITNESS: Generally speaking, any
22 license would be between Shutterstock and
23 a licensee.

24 BY MR. BURROUGHS:

25 Q Okay. And for those 930

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2 licenses, were the contracts or agreements
3 between Shutterstock and the licensee?

4 MS. LACKMAN: Same set of objections.
5 Compound.

6 THE WITNESS: I don't understand how
7 that differs from your previous question.

8 BY MR. BURROUGHS:

9 Q Before we were talking about the
10 license. Now I'm talking about the actual
11 contracts, the agreement.

12 MS. LACKMAN: Objection. Asked and
13 answered. What's the difference between a
14 contract and an agreement and a license?

15 BY MR. BURROUGHS:

16 Q Do you understand the question?

17 MS. LACKMAN: Calls for a legal
18 conclusion.

19 THE WITNESS: I understand what those
20 words mean. I'm not sure how you're
21 differentiating them between -- between
22 them.

23 BY MR. BURROUGHS:

24 Q I'm just trying to use the
25 language that you indicated. Earlier you

1 H. SHIMMIN

2 said there was an agreement between
3 Shutterstock and the licensee, correct?

4 MS. LACKMAN: Objection to the extent
5 that it misstates the testimony.

6 THE WITNESS: It was a licensing
7 agreement -- Shutterstock has, and
8 depending on which license a client gets,
9 a licensee gets, it will depend on the
10 type of license. So it varies, but yes,
11 there is an agreement between every client
12 who licenses an image and Shutterstock.

13 BY MR. BURROUGHS:

14 Q Okay. So is it fair to say that
15 for the 930 licensees for the McGucken
16 photographs, there was a licensing
17 agreement between Shutterstock and that
18 licensee?

19 MS. LACKMAN: Objection to the extent
20 it calls for legal interpretation.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q Okay. And were all of those
24 paid licenses?

25 A Can you define paid?

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2 Q Well, let me ask. Does
3 Shutterstock request payment for licenses?

4 A Well, Shutterstock offers
5 sometimes images for free as part of our,
6 like an intro plan, for example. You
7 know, first five images free or whatever.
8 I do know some of those 930-odd images
9 were part of the free -- five images for
10 free or whatever. So Shutterstock did not
11 receive any payment for some of the
12 licenses.

13 Q But for the others it did
14 receive payment, is that correct?

15 A Yes. I don't know the exact
16 number, some Shutterstock did not and some
17 Shutterstock did.

18 Q And why did Shutterstock offer
19 the free images?

20 MS. LACKMAN: Objection to the extent
21 it calls for speculation. Outside the
22 scope.

23 THE WITNESS: It's like any other
24 company would have a promo. You know, buy
25 one get one free. It's a way to acquire

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2 customers.

3 BY MR. BURROUGHS:

4 Q And when a customer signs up for
5 the five photograph free program, do they
6 provide a credit card number at that time?

7 MS. LACKMAN: Objection. Calls for
8 speculation.

9 THE WITNESS: I believe so. I don't
10 know the details of the various programs,
11 but in order to be a customer and create
12 an account, I believe one's credit card
13 information is required.

14 BY MR. BURROUGHS:

15 Q Do you have any of your
16 photographs on Shutterstock personally?

17 A I do.

18 Q Have you ever received payment
19 from Shutterstock personally?

20 A Yes.

21 Q Okay. Do you encourage other
22 photographs that you know in the community
23 to join Shutterstock?

24 A I do.

25 Q Okay. And have you written a

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2 number of articles about Shutterstock and
3 the benefits of its services?

4 A I have.

5 MS. LACKMAN: -- to the extent it
6 mischaracterizes the material.

7 THE REPORTER: Sorry, I missed the
8 first --

9 MS. LACKMAN: Sorry. I said,
10 objection to the extent it
11 mischaracterizes the material.

12 BY MR. BURROUGHS:

13 Q So is it fair to say that
14 Shutterstock actively seeks contributors?

15 MS. LACKMAN: Objection. Vague.
16 Very vague. Also you are asking -- was
17 the prior question in her personal
18 capacity or in the corporate capacity?
19 Because otherwise the prior question was
20 outside the scope.

21 BY MR. BURROUGHS:

22 Q Go ahead.

23 A So in this instance are you
24 asking me as a corporate person --

25 Q Yes. Remember, I'll include,

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2 "Personally," or, "In your personal
3 capacity," if I'm asking personally.
4 Otherwise, I'm always asking you on behalf
5 of the company.

6 A All right. Just wanted to
7 clarify. So, I mean, Shutterstock doesn't
8 quote-unquote, "Actively," go out
9 recruiting contributors.

10 Q What does Shutterstock do to
11 find or solicit contributors?

12 MS. LACKMAN: Objection. No
13 foundation.

14 THE WITNESS: I'm not in the
15 marketing department. I don't know
16 specifically, but a lot of it is
17 referrals.

18 BY MR. BURROUGHS:

19 Q Anything else?

20 A Probably but not specifically
21 that I know.

22 Q Do you know anything else
23 generally?

24 A I mean, there's widgets one can
25 add to their blog to get a referral fee if

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2 a contributor signs up, so it's more, you
3 know, I think a great deal comes from
4 contributors just having a friend sign up
5 or spreading the word. To my knowledge,
6 Shutterstock does not actively run
7 campaigns to recruit artists.

8 Q Okay. So is it fair to say that
9 Shutterstock will pay its contributors to
10 refer other contributors?

11 MS. LACKMAN: Objection. Vague.

12 THE WITNESS: No. It's a referral
13 when -- if someone signs up, whoever
14 refers this new contributor gets two cents
15 for every image that's sold by this new
16 recruit for two years. So not paying per
17 se, it's more of a referral on downloads
18 that the new recruit would generate.

19 BY MR. BURROUGHS:

20 Q I see. So is it fair to say
21 that Shutterstock will pay an ongoing
22 percentage of the referee's income to the
23 referring individual?

24 MS. LACKMAN: Objection. Misstates
25 the testimony.

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2 THE WITNESS: No. They would get a
3 royalty every time one of their recruits'
4 image was licensed. It's not necessarily
5 an ongoing -- it depends on if the images
6 are downloaded by the new recruit, as it
7 were.

8 BY MR. BURROUGHS:

9 Q Okay. Understood. So, for
10 example, if I was a contributor for
11 Shutterstock and I referred Ms. Zaharia,
12 and she became a contributor at
13 Shutterstock, Shutterstock would pay me a
14 portion of the moneys that Shutterstock
15 derived from Ms. Zaharia's photography, is
16 that accurate?

17 MS. LACKMAN: Objection to the extent
18 it misstates the testimony.

19 THE WITNESS: I mean, if Ms. Zaharia
20 had five of her images licensed this year,
21 you would get ten cents, essentially.

22 BY MR. BURROUGHS:

23 Q So it's fair to say that
24 Shutterstock would pay me a percentage of
25 the income derived from Ms. Zaharia's

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2 work, correct?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. No testimony as to
5 percentage.

6 THE WITNESS: No, it's a flat rate of
7 two cents per image -- I mean, per
8 license.

9 BY MR. BURROUGHS:

10 Q Thank you for the correction.
11 So it's fair to say that Shutterstock
12 would pay me a flat rate for any money
13 that Shutterstock made from Ms. Zaharia's
14 photography, correct?

15 MS. LACKMAN: Objection to the extent
16 it misstates the testimony.

17 THE WITNESS: No. You would only
18 receive two cents per license that Ms.
19 Zaharia received.

20 BY MR. BURROUGHS:

21 Q Understood. Thank you for that.
22 Does Shutterstock run advertisements
23 seeking contributors?

24 MS. LACKMAN: Objection. Vague.
25 Asked and answered.

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2 THE WITNESS: I know they make
3 widgets available on WordPress that
4 individuals can run an advert. But I
5 don't know if the company themselves
6 actively run adverts. I'm not in the
7 marketing department. I don't know.

8 BY MR. BURROUGHS:

9 Q Who provides the widget?

10 MS. LACKMAN: Vague.

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A From one's contributor account,
14 there's a code -- a line of code that you
15 can embed as a widget. And an ad will
16 appear on your -- wherever you put it on
17 your blog, for example.

18 Q Okay. And when you say a
19 contributor account, you're referring to
20 Shutterstock?

21 A Yes. A contributor has a
22 portal. Inside the portal there's a line
23 of code -- refer a contributor, refer a
24 friend, as it were.

25 Q Okay. And the contributor can

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2 use that code on their own website to
3 solicit contributors for Shutterstock? Is
4 that accurate?

5 A If they choose to, yes.

6 Q Okay. Have you yourself done
7 that personally?

8 A Yes, I have.

9 Q Okay. I'm going to pull up a
10 document we'll mark as Exhibit 1. It's a
11 screen capture from your website. Tell me
12 if you've seen this before.

13 (Exhibit 1 was marked for
14 identification.)

15 MS. LACKMAN: And because it's from
16 her website, I'm assuming these are now --
17 we're switching into personal testimony?

18 MR. BURROUGHS: Okay.

19 MS. LACKMAN: Scott, can you please
20 confirm? That this is not corporate
21 testimony?

22 MR. BURROUGHS: Yeah. I'm just
23 asking if she's seen this before.

24 MS. LACKMAN: Correct.

25 MR. BURROUGHS: When I ask questions,

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2 it'll be clear whether or not it's
3 30(b)(6) or not --

4 BY MR. BURROUGHS:

5 Q Ms. Shimmin, have you seen this
6 before?

7 A Yes, I've seen it before.

8 Q Okay. So is this your personal
9 website?

10 A Yes.

11 Q Okay. And is this the blog on
12 your personal website?

13 A Yes.

14 Q Okay. And is this a blog post
15 entitled, "How to Submit Your Photos to
16 Shutterstock"?

17 A Yes.

18 Q Okay. Did you create this blog
19 post within the job obligations that you
20 have at Shutterstock, or was this done
21 personally outside of work?

22 A This was a personal, outside of
23 work, not related to work project.

24 Q Okay. And you see on the right
25 side of the screen, "Submit your images to

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2 Shutterstock today"?

3 A Yes.

4 Q Now is that an advertisement to
5 solicit Shutterstock contributors?

6 A Yeah. This was part of what I
7 mentioned before. You can -- contributors
8 will get a referral fee, so I added this
9 code to my widget on the side. To
10 encourage people to sign up to be a
11 contributor.

12 Q Okay. So is it fair to say that
13 one of the ways that Shutterstock solicits
14 contributors is through the advertisement
15 that we see in Exhibit 1?

16 MS. LACKMAN: Objection. Misstates
17 the testimony. I also want to interpose
18 an objection as to this as a document. It
19 appears to be just a screenshot.

20 BY MR. BURROUGHS:

21 Q Go ahead.

22 A Well, I would say Shutterstock
23 makes it available to contributors. I did
24 this on my own. Shutterstock didn't tell
25 me to do it, just to clarify. It's an

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2 option.

3 BY MR. BURROUGHS:

4 Q And did Shutterstock provide you
5 the code for this advertisement?

6 A Yes.

7 Q Okay. And have you been
8 compensated by Shutterstock through any
9 referrals from this advertisement --
10 personally --

11 MS. LACKMAN: Objection. Calls for
12 speculation.

13 THE WITNESS: From this particular
14 advert, I don't know. I don't keep track.

15 BY MR. BURROUGHS:

16 Q Would the money go directly into
17 your Shutterstock account?

18 MS. LACKMAN: Objection. Calls for
19 speculation.

20 THE WITNESS: It would show up in my
21 contributor earnings. I know I have
22 received money from, but I don't know if
23 it's necessarily this specific
24 advertisement.

25 //

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2 BY MR. BURROUGHS:

3 Q Have you done other
4 advertisements to solicit contributors for
5 Shutterstock -- personally?

6 MS. LACKMAN: Objection -- misstates
7 testimony?

8 THE WITNESS: No.

9 BY MR. BURROUGHS:

10 Q Have you referred other
11 photographers to Shutterstock personally?

12 A I have.

13 Q Can you estimate for me how
14 many?

15 A Directly I can -- just my
16 brother. I mean, I have probably ten
17 referrals somewhere just -- either from
18 the post or word-of-mouth. I'm not sure.
19 I don't know the number.

20 Q So when you refer someone to
21 Shutterstock like your brother, and he
22 refers someone else, do you get
23 compensated in connection with that third
24 party?

25 A No, I do not.

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2 Q Okay. And this ad on your blog
3 is encouraging folks to submit images to
4 Shutterstock, right?

5 A Broadly, it's just to have them
6 become a contributor. They can do
7 illustrations, they can do video. Not
8 necessarily photos.

9 Q Okay. So is it fair to say that
10 this advertisement on your blog is
11 encouraging folks to submit images to
12 Shutterstock?

13 MS. LACKMAN: Objection. Asked and
14 answered.

15 THE WITNESS: I would say
16 specifically it's to encourage my fellow
17 artists to submit their work to
18 Shutterstock. Whatever their work happens
19 to be, whatever their medium happens to
20 be.

21 BY MR. BURROUGHS:

22 Q Okay, so it does say, "Images,"
23 here, but you understand it to be all
24 types of content or assets that are being
25 solicited, correct?

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2 MS. LACKMAN: Objection --

3 THE WITNESS: Yeah.

4 MS. LACKMAN: Objection. The term,
5 "Solicited." No foundation.

6 BY MR. BURROUGHS:

7 Q And once the other artists
8 submit the content to Shutterstock, what
9 does Shutterstock do with it?

10 MS. LACKMAN: Objection. Vague.

11 THE WITNESS: Generally, because it
12 is a vague question, the artist submits
13 the content to review. It goes through a
14 review process. And it's either rejected
15 or it's put on the site to be licensed.

16 BY MR. BURROUGHS:

17 Q Okay. Can you walk me through
18 the review process?

19 A Sure. Do you want the
20 perspective of the contributor or the
21 reviewer?

22 A First let's do the contributor.

23 Q Sure. So a contributor logs
24 into his portal, as it were. Uploads
25 images -- we'll stick with images.

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There's two places where they can add information. There's a description, which is also the title of the image. And then there are keywords, and a contributor can add up to 50 keywords. Then there's categories, up to two that a contributor can choose from. Optional is a location. And then there's a tick box whether this is submitted for commercial or editorial use. There's two fields if they need to submit a model or a property release. I believe that's it.

And so once the contributor does all this, they hit submit, and it goes off to review. And then the contributor waits. They'll receive an email once their content has been reviewed. It's automatically generated as, "Congratulations, all ten of your images were approved," or, "Sorry, it was rejected of this reason," and then they'll list the specific reasons. And if it's fixable, the contributor can resubmit the content. If they forgot the model

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2 release, for example, the contributor can
3 re-submit the image with the attached
4 model release, for example.

5 Q And what are those reasons that
6 you mentioned?

7 MS. LACKMAN: Objection. Vague.

8 THE WITNESS: Shutterstock has
9 various rejection reasons. Some apply to
10 the quality of the image, so it could be
11 focus, noise. That sort of thing. And
12 then there were, let's say compliance
13 reasons such as, you know, lacking a model
14 release, if it was an identifiable person.
15 Maybe there's a physical trademark on
16 something that was submitted for
17 commercial use.

18 BY MR. BURROUGHS:

19 Q Okay. Any other reasons?

20 A Yeah, I mean there's -- there's
21 more. Intellectual property is a
22 rejection reason. You know, previously
23 submitted, or you've already submitted a
24 similar image in your portfolio that
25 exists already. There's probably about

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2 30-odd rejection reasons.

3 Q And are those 30-odd rejection
4 reasons set forth in a guideline?

5 A Yes.

6 Q Okay. Will Shutterstock reject
7 a photo because they think no one will
8 license it?

9 MS. LACKMAN: Objection. Calls for
10 speculation. Outside of scope.

11 THE WITNESS: No. Shutterstock does
12 not approve or reject based on perceived
13 commercial value. That's not one of the
14 criteria.

15 BY MR. BURROUGHS:

16 Q Will Shutterstock reject a photo
17 because it's not high-quality?

18 MS. LACKMAN: Objection, vague.

19 THE WITNESS: There's several quality
20 reasons that are looked at. One is a
21 minimum file size, and if it doesn't meet
22 the minimum it's automatically rejected.
23 But if it's grainy or it's noisy or it's
24 out of focus it will be rejected for
25 quality issues.

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2 BY MR. BURROUGHS:

3 Q Does Shutterstock pride itself
4 on its high quality portfolio of
5 photography?

6 MS. LACKMAN: Objection. Foundation.
7 Assumes facts not in evidence. Calls for
8 speculation. Outside the scope.

9 BY MR. BURROUGHS:

10 Q Go ahead.

11 A Shutterstock wants to have a
12 high-quality library, but that also is to
13 say that not every image that's approved
14 has to be the crispest, the most fantastic
15 image ever. There's a lot of value in --
16 or surprise value in shots that might not
17 be perfect. For that reason, Shutterstock
18 doesn't say it has to be 100 percent
19 perfect or we won't accept it.

20 Q So Shutterstock might approve a
21 photo that's ugly if it thinks that it
22 might have some appeal to its customers,
23 is that correct?

24 MS. LACKMAN: Objection. Misstates
25 the testimony. No foundation.

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2 THE WITNESS: I'm saying Shutterstock
3 will not reject an image if it's not --
4 will not only accept perfect images. It
5 doesn't have to be perfect to be accepted.
6 I guess that's what I mean to say.

7 THE REPORTER: What was the last
8 part?

9 THE WITNESS: It doesn't have to be
10 perfect in order to be accepted.

11 BY MR. BURROUGHS:

12 Q And why would Shutterstock
13 accept photos that weren't perfect?

14 MS. LACKMAN: Objection. Asked and
15 answered. Calls for speculation.
16 Misstates the testimony.

17 THE WITNESS: There's many reasons.
18 One is, there's no way to predict what a
19 customer is looking for. Perfection might
20 not be the most important thing. Another
21 reason might be it's a hard shot to get.
22 So maybe slightly out of focus is
23 acceptable in the instance where it was a
24 really unique shot, for example.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. Any other reasons?

4 A Those are the main ones.

5 Q Okay. So does Shutterstock
6 curate the photography that it offers on
7 its site?

8 MS. LACKMAN: Objection, vague.

9 Really vague. Overbroad. Can you be more
10 specific?

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A I would say no, we don't curate
14 in the traditional sense of curation.
15 Images are reviewed and accepted or
16 rejected. The curation process doesn't go
17 on -- quality control or quality check and
18 a compliance check, and then it's approved
19 or rejected. It's not curated.

20 Q So is it fair to say that
21 Shutterstock reviews a pool of photographs
22 and selects some of those photographs for
23 use on its site?

24 MS. LACKMAN: Objection. Misstates
25 prior testimony. Asked and answered.

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2 THE WITNESS: It will reject --
3 sorry.

4 BY MR. BURROUGHS:

5 Q Go ahead.

6 A It either will accept or reject.
7 It's not a curation process.

8 Q So is it fair to say that
9 Shutterstock reviews a pool of
10 photographs, rejects some of them, and
11 selects others for use on its website?

12 MS. LACKMAN: Objection. Misstates
13 the testimony. No foundation for, "Pool
14 of photographs."

15 THE WITNESS: I wouldn't use the
16 word, "Select." It's just rejected or
17 approved. It's not saying, "We love this,
18 we don't like this." It has nothing to do
19 with like -- does it meet a certain
20 criteria? Accepted. If it doesn't, it's
21 rejected.

22 BY MR. BURROUGHS:

23 Q So is it fair to say that
24 Shutterstock will review the pool of
25 photographs submitted by the contributors

1 H. SHIMMIN

2 and approve some and reject others with
3 the approved photographs appearing on
4 Shutterstock's site and the rejected
5 photographs not appearing on
6 Shutterstock's site?

7 MS. LACKMAN: Objection. No
8 foundation as to, "Pool of photographs."
9 Misstates the testimony. Asked and
10 answered.

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A Yes.

14 Q And for the photographs
15 submitted by contributors that are
16 rejected, those will not appear on
17 Shutterstock's site, correct?

18 MS. LACKMAN: Objection. Calls for
19 speculation. You can answer if you know.

20 THE WITNESS: No. Rejected images
21 are not available to be licensed on the
22 site.

23 BY MR. BURROUGHS:

24 Q Okay. So only the photograph
25 that Shutterstock approves are available

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2 to be licensed on the site, correct?

3 MS. LACKMAN: Objection. Vague.

4 Compound.

5 THE WITNESS: Yes.

6 BY MR. BURROUGHS:

7 Q Can a Shutterstock contributor
8 upload a photograph directly to
9 Shutterstock's site where it's offered for
10 license?

11 MS. LACKMAN: Objection. Vague as
12 to, "Directly."

13 THE WITNESS: No. It has to go
14 through the review process.

15 BY MR. BURROUGHS:

16 Q Okay. And can a Shutterstock
17 contributor upload a photograph to
18 Shutterstock where it's displayed at the
19 time of upload on Shutterstock?

20 MS. LACKMAN: Objection to the extent
21 it calls for a legal interpretation.
22 Asked and answered.

23 THE WITNESS: I mean, the contributor
24 submit it. It goes to review. After it's
25 not rejected, if it's approved, eventually

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2 it'll be on the site. It may not be
3 immediate. It depends on many factors of
4 the system. It might take a day to appear
5 on the site.

6 BY MR. BURROUGHS:

7 Q So can a contributor go to
8 Shutterstock and upload a photograph for
9 it to be immediately viewable on
10 Shutterstock?

11 MS. LACKMAN: Objection. Asked and
12 answered.

13 THE WITNESS: That's outside of the
14 contributor's control and outside of
15 really Shutterstock's control. It depends
16 on the system.

17 BY MR. BURROUGHS:

18 Q On whose system?

19 A Well, Shutterstock's system, but
20 it depends on -- because it's not
21 immediate always. For example, if there's
22 a lot of images waiting to be approved or
23 in the review queue, it might take 12
24 hours or 14 hours for the content to be
25 available. It's not always immediate.

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2 Q Okay. So is it fair to say that
3 Shutterstock's system controls what
4 appears on shutterstock.com?

5 MS. LACKMAN: Objection. Vague.

6 THE WITNESS: It is vague. It
7 doesn't -- can you rephrase the question?

8 BY MR. BURROUGHS:

9 Q Okay, and I'm just using your
10 words, because you said it was
11 Shutterstock's system that decided what
12 appears. Well, maybe we should back up.
13 What is the Shutterstock system that you
14 refer to?

15 MS. LACKMAN: Objection to the extent
16 it misstates the testimony.

17 THE WITNESS: I mean the system, it's
18 the backend. It's a very complicated --
19 and I'm not an engineer, but there are
20 many many things that the photo has to go
21 through in order for it to be published on
22 the site to be licensed. When I say,
23 "Shutterstock's system," it's a
24 complicated backend that I don't know all
25 the ins and outs of. So that's why it's

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2 not immediate. A lot of little things
3 automatically go through this process
4 before an image is ready.

5 BY MR. BURROUGHS:

6 Q Okay. And is it fair to say
7 that all those things on the Shutterstock
8 system that the image must go through are
9 within Shutterstock's control?

10 MS. LACKMAN: Objection to the extent
11 it calls for a legal interpretation.
12 Vague. Overbroad.

13 THE WITNESS: As a non-engineer, I
14 don't understand every single process.
15 I'm going to say I don't know. There's a
16 lot of things going on.

17 BY MR. BURROUGHS:

18 Q Does the contributor have any
19 involvement with all of those steps?

20 A No. Once the contributor hits
21 submit, they don't have any control until
22 it's approved.

23 Q Okay. And is it fair to say
24 that once the contributor hits submit,
25 Shutterstock has exclusive control over

1 H. SHIMMIN

2 what appears on the website?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. Calls for a legal
5 interpretation as to exclusive. Vague.

6 THE WITNESS: I'm not quite sure how
7 to answer that. In that situation,
8 Shutterstock's not controlling it. It's
9 just it goes through an automated process
10 that is set up by various chains.

11 BY MR. BURROUGHS:

12 Q And does Shutterstock
13 exclusively decide what appears on its
14 site?

15 MS. LACKMAN: Objection. Same
16 objections. Asked and answered.

17 THE WITNESS: No. Shutterstock does
18 not determine what appears on the site.
19 It's contributor-run, and it's only going
20 through this quality and compliance check.

21 BY MR. BURROUGHS:

22 Q So can contributor content
23 appear on Shutterstock's website without
24 the approval of Shutterstock?

25 MS. LACKMAN: Objection. Asked and

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2 answered.

3 THE WITNESS: Without the approval of
4 the reviewer, no.

5 BY MR. BURROUGHS:

6 Q Okay. So is it fair to say that
7 no photograph will appear on Shutterstock
8 unless the Shutterstock reviewer approves
9 it?

10 MS. LACKMAN: Objection to the extent
11 it mischaracterizes the testimony. You
12 can answer again.

13 THE WITNESS: That's true. It has to
14 be approved by a reviewer.

15 BY MR. BURROUGHS:

16 Q And if it's not approved by a
17 Shutterstock reviewer, it will not appear
18 on the site, correct?

19 A No --

20 MS. LACKMAN: Objection. Asked and
21 answered.

22 BY MR. BURROUGHS:

23 Q If the Shutterstock reviewer
24 rejects the photograph, will it appear on
25 the site?

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2 A It will not be available for
3 licensing.

4 Q And will it appear on the site?

5 MS. LACKMAN: Objection. Vague. Can
6 you clarify?

7 THE WITNESS: No.

8 BY MR. BURROUGHS:

9 Q So just to be clear, unless and
10 until a Shutterstock reviewer approves a
11 particular photograph, it will not appear
12 on the Shutterstock website or be
13 available for license. Is that correct?

14 MS. LACKMAN: Objection, compound,
15 and object to the extent it misstates the
16 testimony.

17 THE WITNESS: Yes.

18 BY MR. BURROUGHS:

19 Q So can anyone become a
20 contributor, or does Shutterstock vet its
21 contributors?

22 MS. LACKMAN: Objection, compound.

23 THE WITNESS: Anyone can sign up to
24 be a contributor. They have to confirm
25 their email address. And in order to get

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2 paid, they have to fill out tax forms.

3 BY MR. BURROUGHS:

4 Q Is there any other sort of
5 review process for the photographers that
6 are seeking to become contributors?

7 MS. LACKMAN: Vague. Objection,
8 vague.

9 THE WITNESS: There's some technology
10 in the background that helps, like,
11 automate some flags with potential
12 problematic contributors.

13 BY MR. BURROUGHS:

14 Q And what are those?

15 MS. LACKMAN: Objection. Vague as
16 to, "Those."

17 THE WITNESS: There's a third-party
18 software that we use. I do not know what
19 the parameters are because I'm not on that
20 team.

21 BY MR. BURROUGHS:

22 Q Okay. So if I went to the
23 Shutterstock website right now, could I
24 upload a photograph for it to appear on
25 Shutterstock within the next 15 minutes?

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2 MS. LACKMAN: Objection. Vague.

3 Compound -- confusing. I don't
4 understand. Do you mean, in the next 15
5 minutes, you can go up there, the photo
6 will appear in 15 minutes? Like, can you
7 please rephrase? I just don't understand
8 the question.

9 BY MR. BURROUGHS:

10 Q Remember, it's not important if
11 your attorney understands. It's important
12 if you understand. Do you understand the
13 question?

14 A You can sign up to be a
15 contributor, and you can start submitting
16 photographs today, probably.

17 Q Okay. And when I submit those
18 photographs, would they go online and be
19 displayed by Shutterstock instantly, or
20 would I have to wait for the review
21 process that you referred to?

22 MS. LACKMAN: Objection, asked and
23 answered.

24 THE WITNESS: No. As I already
25 explained, it has to go through a

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2 submission -- a review process.

3 BY MR. BURROUGHS:

4 Q So if I went to Shutterstock and
5 was approved as a contributor and uploaded
6 photographs, I would have to wait for the
7 review process before those went live on
8 Shutterstock, correct?

9 A Yes.

10 Q And when I submit -- well, let
11 me withdraw that. So after a hopeful
12 contributor submits photographs to
13 Shutterstock, what happens to those
14 photographs?

15 MS. LACKMAN: Objection, vague.
16 Calls for speculation. Asked and
17 answered. She went through this in
18 detail.

19 THE WITNESS: Can you be more
20 specific?

21 BY MR. BURROUGHS:

22 Q Do they go into a queue?

23 A After it's submitted? Yeah. It
24 goes into a queue to be reviewed. There's
25 various queues. For example, video and

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The diagram illustrates a complex network or organizational structure. It features a central column of nodes, with various branches extending to the left and right. The nodes are represented by small yellow circles, and the connections are shown as black lines. The overall layout is dense and hierarchical, suggesting a complex system or organization.

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2 Q Okay. How many reviewers are at
3 Shutterstock now for photography?

4 MS. LACKMAN: Objection. Vague as
5 to, "At Shutterstock."

6 THE WITNESS: Shutterstock has about
7 200 remote reviewers across all the
8 queues. I don't know specifically how
9 many are just trained in photo.

10 BY MR. BURROUGHS:

11 Q And of the photography in the
12 queue, what's your best estimate as to the
13 percentage that's approved currently?

14 MS. LACKMAN: Objection. Outside the
15 scope.

16 THE WITNESS: I'm not sure. I
17 haven't looked at those numbers for
18 several years.

19 BY MR. BURROUGHS:

20 Q When you last looked at the
21 numbers, what was the percentage of
22 photographs that were approved?

23 MS. LACKMAN: Objection. Vague as to
24 time.

25 THE WITNESS: It was about 93

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□ □ □

[illegible][illegible]

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2 options.

3 BY MR. BURROUGHS:

4 Q Okay. And you said the folks
5 that are a level above the reviewers are
6 called review coordinators?

7 A Yes.

8 Q Okay. And did they have a
9 separate set of guidelines that they use
10 to curate or select photographs, or do
11 they use the same reviewer guidelines that
12 the initial reviewers use?

13 MS. LACKMAN: Objection. Foundation.

14 THE WITNESS: Yes, it's the same
15 guidelines.

16 MS. LACKMAN: Scott, I've just
17 noticed we've been going about an hour. I
18 don't want to interrupt your flow, but if
19 there's a point at which you think we
20 could take a break, I could use one in the
21 next few minutes.

22 MR. BURROUGHS: Yeah. We can
23 probably go off the record in about three
24 or four minutes here.

25 MS. LACKMAN: Thanks.

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2 BY MR. BURROUGHS:

3 Q So going back to the process,
4 when the reviewer says yes and approves
5 the photograph, it's at that point that
6 the photograph can first be made available
7 to Shutterstock customers, correct?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: No. As I said, it has
10 to go through various other little steps.
11 It's not necessarily instant. Sometimes
12 it might happen within a minute or two.
13 It really depends on the day, to be
14 honest. How backlogged the system is, for
15 example.

16 BY MR. BURROUGHS:

17 Q Fair enough. So is it fair to
18 say that a contributor will submit a
19 photograph, the Shutterstock reviewer, an
20 individual, will review it, and if that
21 reviewer finds that it meets
22 Shutterstock's standards, then it will
23 move it to this secondary process that
24 must be run before the photograph goes
25 live on the Shutterstock site?

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2 MS. LACKMAN: Objection to the extent
3 it mischaracterizes the testimony. Vague
4 as to process.

5 THE WITNESS: Essentially, yes.

6 BY MR. BURROUGHS:

7 Q Okay. And are you aware of any
8 of the steps that go in within that second
9 phase of the review?

10 MS. LACKMAN: Objection to the
11 categorization of, "Second phase of
12 review." Misstates testimony.

13 THE WITNESS: I know very generally.
14 I know a watermark is generated, and a few
15 different sizes of thumbnail are made
16 available. The photo is resized depending
17 on how -- where it's being displayed. I'm
18 sure there's more, but I'm not aware of
19 specifics.

20 BY MR. BURROUGHS:

21 Q Okay. And how many different
22 sizes are made available on the
23 Shutterstock site?

24 MS. LACKMAN: Objection. Vague. No
25 foundation.

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2 THE WITNESS: I don't know exactly
3 how many.

4 BY MR. BURROUGHS:

5 Q Is it fair to say that a
6 thumbnail, a large, and a medium are made
7 available?

8 MS. LACKMAN: Objection. Objection
9 to the characterization of the question.

10 THE WITNESS: I know a certain number
11 are made immediately, and then some are
12 made later. For example, if -- well, I'm
13 guessing. I'm not sure. They're not all
14 made at the same time, so certain actions
15 need to happen in order for different
16 thumbnails to be created.

17 BY MR. BURROUGHS:

18 Q Okay, and at some point
19 Shutterstock makes available a full size
20 copy of the photographs submitted by the
21 contributor, right?

22 MS. LACKMAN: Objection. Vague as to
23 full size.

24 THE WITNESS: A full size would only
25 be available upon a customer licensing the

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2 image. When they hit, "License," and
3 download it, then they have access to the
4 full size.

5 BY MR. BURROUGHS:

6 Q Okay, and is it also full
7 resolution?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: When I say, "Full
10 size," it is the size and resolution that
11 the contributor submitted.

12 BY MR. BURROUGHS:

13 Q And the size that's displayed on
14 Shutterstock's website before download is
15 also close to full size, correct?

16 MS. LACKMAN: Objection, vague.
17 Misstates testimony.

18 THE WITNESS: No. It would also
19 depend on the size that the contributor
20 submitted.

21 BY MR. BURROUGHS:

22 Q Okay. How would you
23 characterize the size that the photograph
24 is displayed on the Shutterstock website
25 before download?

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2 MS. LACKMAN: Objection, vague. It
3 calls for speculation. Misstates
4 testimony.

5 THE WITNESS: These are nuances that
6 I do not know the answer to. There are
7 various ways in which an image are
8 displayed. There are many different sizes
9 in which it's displayed, and I don't know
10 exactly on what screen we're looking at
11 and what size resolution that would be.
12 Low-quality thumbnails are available --
13 dimensions and stages, depending on how
14 the image is being viewed and on what
15 page.

16 BY MR. BURROUGHS:

17 Q Okay. So as far as you can
18 recall, Shutterstock displays these images
19 in different sizes and resolutions
20 depending on how the viewer is looking at
21 the photograph, is that accurate?

22 A Yeah.

23 MS. LACKMAN: Objection. Misstates
24 testimony.

25 MR. BURROUGHS: All right. We can go

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2 off the record here for, let's say five
3 minutes and come back, unless anybody
4 needs any more time than that? Madam
5 Court Reporter?

6 THE REPORTER: I'm good with five
7 minutes. Off the record at 11:09 a.m.

8 (Off the record.)

9 THE REPORTER: We're back on the
10 record, 11:19 a.m.

11 BY MR. BURROUGHS:

12 Q All right. You understand
13 you're still under oath?

14 A Yes.

15 Q Okay. Did you get a chance to
16 talk to your attorney during the break?

17 A Yes.

18 THE REPORTER: -- louder --

19 MS. LACKMAN: Yeah. It was a little
20 low. I don't know if you can get a little
21 closer.

22 THE WITNESS: To my speaker?

23 MS. LACKMAN: Yeah. Now it sounds
24 fine.

25 THE WITNESS: Okay. I'll speak up.

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2 Sorry.

3 MS. LACKMAN: That all right?

4 THE REPORTER: Yeah.

5 MS. LACKMAN: Yeah. Perfect.

6 BY MR. BURROUGHS:

7 Q Okay. The review coordinators
8 that you mentioned earlier, are they
9 Shutterstock employees?

10 MS. LACKMAN: Objection, asked and
11 answered.

12 THE WITNESS: Yes.

13 BY MR. BURROUGHS:

14 Q And going back to the process
15 from the contributor's perspective, when
16 we left off, you had indicated the various
17 phases of the approval process. Once my
18 photo's approved and on the website, how
19 am I compensated if it's used by a
20 Shutterstock customer?

21 MS. LACKMAN: Objection, vague --

22 THE WITNESS: A contributor gets a
23 royalty, and it depends. It depends on
24 the type of license that a customer uses.
25 So it's based on a -- also what type of

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2 plan they have, so it's based on a
3 percentage of the type of license and the
4 customer that licenses it.

5 BY MR. BURROUGHS:

6 Q Okay. So does the contributor
7 receive a royalty in the form of a
8 percentage of the money that Shutterstock
9 makes from the photograph?

10 MS. LACKMAN: Objection. Compound.

11 THE WITNESS: Not necessarily.

12 Because as I mentioned earlier, like the
13 five free images. Shutterstock does not
14 make any money, but the contributor was
15 still given a royalty. So it's not
16 necessarily a percentage of what
17 Shutterstock makes, it's a percentage of
18 the license that a customer has.

19 BY MR. BURROUGHS:

20 Q Okay. So it's a percentage of
21 the license that Shutterstock enters into
22 with its customer. Is that accurate?

23 A Yes. As far as my understanding
24 is, yes.

25 Q Okay. And is there an agreement

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2 between Shutterstock and the contributor
3 that lays this out?

4 MS. LACKMAN: Objection, vague.

5 THE WITNESS: I don't know if it
6 specifically goes into the details of how
7 they'll be compensated, but when a
8 contributor signs up, there's a terms of
9 service, and in that terms of service
10 that's available when they sign up, and
11 also through the portal of the
12 contributor, it says that they will be
13 compensated -- receive a royalty when it's
14 licensed. That is spelled out.

15 BY MR. BURROUGHS:

16 Q And do those terms of service
17 apply to the agreement between
18 Shutterstock and the contributor?

19 MS. LACKMAN: Objection. Calls for
20 legal interpretation. Foundation.
21 Confusing compound.

22 THE WITNESS: The terms of service is
23 an agreement between Shutterstock and the
24 contributor.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. What does the
4 Shutterstock website do? How would you
5 explain it to somebody who hadn't heard of
6 it?

7 A I would say Shutterstock is a
8 worldwide marketplace where contributors
9 submit their work to Shutterstock and the
10 contributor is giving Shutterstock
11 permission to license their content to
12 third parties.

13 Q Does Shutterstock have any
14 mobile apps?

15 A Yes.

16 Q Okay. How many?

17 A I am aware of two.

18 Q Can you name them for me?

19 A Yes. There's a Shutterstock
20 contributor app, and then there's a
21 customer app.

22 Q And what does the contributor
23 app do?

24 A The contributor app allows -- so
25 it's connected to the contributor's

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2 account, so the contributor can see
3 earnings. It's broken down per day, and
4 then per month, so one can see how much
5 royalties they've made. One can submit
6 content through this app as well.

7 Q Okay. And when it's submitted
8 on that app, does it go into the same
9 queue that we talked about earlier?

10 A Yes.

11 Q And what's the reviewer app?

12 MS. LACKMAN: Objection. Misstates
13 testimony.

14 THE WITNESS: No app for reviewer.
15 It's just for the customers.

16 BY MR. BURROUGHS:

17 Q And what does the customer app
18 do?

19 A It's essentially just like the
20 website. Customers can browse the library
21 and they can also license content through
22 the app.

23 Q So if I want to license
24 Shutterstock content, I can download the
25 app, log on, select a photograph, and then

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2 purchase a license for it from
3 Shutterstock?

4 MS. LACKMAN: Objection. Vague.
5 Misstates testimony.

6 THE WITNESS: That is possible, yes.
7 BY MR. BURROUGHS:

8 Q And can I pay Shutterstock for
9 the license directly through the app?

10 MS. LACKMAN: Objection, calls for
11 speculation.

12 THE WITNESS: I don't know if you can
13 pay through the app. Usually a customer
14 will have like a package plan, like a
15 subscription. You get ten images per
16 month, for example. So that would have
17 already been paid for. So I don't know
18 the answer to that. I don't know if you
19 can sign up for a plan -- I imagine you
20 can, but I don't know.

21 BY MR. BURROUGHS:

22 Q Okay. So if I had a
23 Shutterstock package, I could log onto the
24 app and then select photographs to use
25 pursuant to my package?

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2 A Yes.

3 MS. LACKMAN: Objection -- to the
4 term --

5 BY MR. BURROUGHS:

6 Q What is Shutterstock Editor?

7 A So Editor is an online tool that
8 customers can do very simple, let's say
9 edits or changes to an image. So for
10 example, they can crop it, they can change
11 it to black and white. Maybe add like a
12 sepia tone, before they download it. So
13 they would download that exact, say, size
14 they needed. For example, they have --
15 Facebook has specific size requirements,
16 so the customer could just crop it to the
17 size they want, license that size, which
18 is a perfect size for their Facebook ad,
19 for example.

20 Q Does Shutterstock have a
21 specific license that allows the use of
22 its assets in advertising as opposed to
23 editorial?

24 MS. LACKMAN: Objection, foundation.

25 THE WITNESS: So there's content

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2 that's available commercially, and that
3 can be used for advertisements. And then
4 there's content that's available for
5 editorial use only, and that can only be
6 used for news reporting, stories of human
7 interest. It cannot be used, for example,
8 to advertise your company or your product.
9 So it's like news reporting is the main
10 different.

11 BY MR. BURROUGHS:

12 Q Are there any other types of
13 licenses that Shutterstock offers to its
14 clients for its photography?

15 MS. LACKMAN: Objection to the term,
16 "Its photography." No foundation.

17 THE WITNESS: So just to clarify,
18 Shutterstock doesn't offer a commercial
19 license versus an editorial license. They
20 offer a license, and whether the content
21 was submitted for commercial or editorial
22 use will determine the restrictions on the
23 content. So for example, a customer could
24 apply a standard license for either a
25 commercial or an editorial image. So the

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2 standard license doesn't change per se,
3 it's just how -- whether an editorial or a
4 commercial image can be used --
5 difference.

6 BY MR. BURROUGHS:

7 Q And within the commercial
8 license, are there other limitations or
9 types of licenses that a customer can
10 purchase from Shutterstock?

11 MS. LACKMAN: Objection, compound.

12 THE WITNESS: So Shutterstock offers
13 a variety of licenses. The most common
14 are standard and enhanced. So standard
15 license, for example, you can do it on any
16 sort of social media, any sort of web use.
17 You can use it for running an ad on
18 Facebook. You can do it up to 10,000
19 print copies, so whether it's your
20 magazine or your flier. It does not allow
21 things like merchandise or film projects
22 over \$10,000. You would have to get an
23 enhanced license for that, for example.

24 BY MR. BURROUGHS:

25 Q And, for example, if I wanted to

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2 use a photograph on t-shirts, there may be
3 a limitation where I can use it only up to
4 5,000 or a certain number of t-shirts, is
5 that correct?

6 A No. Merchandise is slightly
7 different. The print limit is just for,
8 like, printed, like paper prints, as they
9 are non-merchandise. So like a flier or a
10 newspaper or a magazine. But something
11 like a t-shirt or a hat or a mug falls
12 under the merchandise category, and that
13 is not permitted with just a standard
14 license. A client would have to get an
15 enhanced license.

16 Q And is the enhanced license more
17 expensive?

18 MS. LACKMAN: Objection. Vague.

19 THE WITNESS: Yes.

20 BY MR. BURROUGHS:

21 Q Okay. And so when a customer
22 buys an enhanced license, Shutterstock
23 makes more money and the contributor makes
24 more money, correct?

25 MS. LACKMAN: Objection, calls for

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2 speculation. No foundation.

3 THE WITNESS: Usually.

4 BY MR. BURROUGHS:

5 Q Does Shutterstock also offer a
6 white glove service?

7 A Shutterstock offers more hands-
8 on experience for higher-end, higher-
9 paying customers, like -- enterprise.
10 Some of the large businesses may have more
11 assistance.

12 Q And for those accounts, are the
13 license or fees commensurately higher?

14 MS. LACKMAN: Objection, compound.
15 And foundation.

16 THE WITNESS: There's a lot of
17 nuances and complications that I'm not
18 that familiar with, but they'll have often
19 bespoke agreements where, yes, fees are
20 higher, but they might be negotiated for
21 more uses, for example. And a higher fee
22 to have more services offered by
23 Shutterstock.

24 BY MR. BURROUGHS:

25 Q And does Shutterstock have a

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2 program where it provides a photographer
3 to a client to create photos?

4 MS. LACKMAN: Objection, vague.

5 THE WITNESS: Shutterstock has a
6 different business unit called
7 Shutterstock Studios, and that is working
8 directly with a client to produce other --
9 a video or commercial -- yes, we offer a
10 service like that.

11 BY MR. BURROUGHS:

12 Q And do Shutterstock contributors
13 create the content for that service?

14 MS. LACKMAN: Objection, vague.

15 THE WITNESS: That process has
16 evolved, and I am unsure whether
17 contributors still can participate in that
18 program. But Shutterstock will hire
19 photographers who could or could not be
20 contributors, but they will hire
21 photographers or videographers to work on
22 the project.

23 BY MR. BURROUGHS:

24 Q Okay. And is it fair to say
25 that the majority of Shutterstock's

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2 revenue is derived from licensing its
3 photographs?

4 MS. LACKMAN: Objection. Vague.
5 Confusing as to, "Its photographs." Also
6 outside the scope.

7 THE WITNESS: I don't know what
8 percentage Shutterstock's revenue comes
9 from what stream. Shutterstock has
10 various business units, and I couldn't say
11 with any sort of confidence what percent
12 would come from licensing photographs.

13 BY MR. BURROUGHS:

14 Q So sitting here today, your best
15 understating is that Shutterstock receives
16 revenues from the Shutterstock Studios
17 services, the white glove services, and
18 the licensing and subscription packages
19 that it sells. Is that correct?

20 MS. LACKMAN: Objection to the
21 categorization, "White glove services."
22 Misstates testimony.

23 THE WITNESS: There are varying
24 avenues where Shutterstock can make money.

25 //

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2 BY MR. BURROUGHS:

3 Q And you don't know the
4 percentage of the revenues, correct?

5 A I do not.

6 Q Okay. Can a customer purchase a
7 Shutterstock license without having a
8 Shutterstock subscription?

9 MS. LACKMAN: Objection. Vague as
10 to, "Shutterstock license."

11 THE WITNESS: Yes. A customer can
12 buy an on-demand or like a five-pack of
13 images, for example. They don't have to
14 have a monthly subscription.

15 BY MR. BURROUGHS:

16 Q Understood. So I could go to
17 Shutterstock right now, select five
18 photographs, and then pay Shutterstock for
19 a license to use those photographs,
20 correct?

21 A It would happen in the reverse.
22 You would purchase a five-pack, and then
23 you would have 12 months in which to
24 choose five images. Actually, yes. You
25 can buy five and then you can choose which

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2 content or assets, does Shutterstock
3 maintain rights to that content for a
4 particular time?

5 MS. LACKMAN: Objection. Vague,
6 compound. Calls for legal interpretation.

7 THE WITNESS: When a contributor
8 chooses to delete an image, it is in the
9 terms of service that Shutterstock say
10 that within, I think 30 or 60, I think
11 it's 60 days, Shutterstock could still
12 possibly license that content.

13 BY MR. BURROUGHS:

14 Q And isn't it true that the terms
15 also indicate that any licenses that
16 Shutterstock has granted in connection
17 with that content will remain valid
18 notwithstanding the deletion or removal?

19 MS. LACKMAN: Objection to the extent
20 it calls for a legal interpretation
21 outside the scope.

22 THE WITNESS: So Shutterstock
23 licenses are worldwide in perpetuity, so
24 even if a contributor decides not to make
25 that asset available, even if it's been

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2 licensed, that license is still valid.

3 BY MR. BURROUGHS:

4 Q So we walked through the review
5 process from the contributor perspective
6 earlier. Now I want to look more closely
7 at the reviewer perspective. When a
8 contributor submits a photograph for
9 Shutterstock's review, what's the first
10 thing that a reviewer does with it?

11 MS. LACKMAN: Objection, vague.

12 Asked and answered.

13 THE WITNESS: So every reviewer has
14 their own, let's say order. So I can't
15 say, "He does this, then this, then this,"
16 but they'll do all these things and the
17 order doesn't matter, because every
18 reviewer has their own flow. But what
19 happens is a reviewer logs into the review
20 portal, as it were, and they open up their
21 window and content is automatically
22 displayed for them to review. And they'll
23 look at the image. They can zoom in.
24 They're looking for reasons to reject it.
25 You know, it could be --

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2 quality checks.

3 BY MR. BURROUGHS:

4 Q And if the focus isn't up to
5 Shutterstock standards, will the
6 photograph be rejected?

7 MS. LACKMAN: Objection, foundation.

8 THE WITNESS: Well, if it seems out
9 of focus on a place that should be, it
10 will be rejected to focus. But some
11 contributors like to do like these bokeh
12 that are completely blurry, and if that
13 seems to be the intention of the
14 contributor, those are accepted. So a
15 straight-out yes or no is not
16 necessarily --

17 BY MR. BURROUGHS:

18 Q Okay. And does the Shutterstock
19 reviewer have the discretion to make that
20 decision?

21 MS. LACKMAN: Objection. Vague as
22 to, "Discretion."

23 THE WITNESS: They're trained to know
24 the difference between something that's
25 just out of focus and something that's

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2 more intentional, like these out-of-focus
3 background like I mentioned before, bokeh.

4 THE REPORTER: I'm sorry, you were
5 drifting towards the end.

6 THE WITNESS: It's B-O-K-E-H. It's a
7 camera technique where essentially you
8 just blur out everything.

9 BY MR. BURROUGHS:

10 Q So Shutterstock provides them
11 with that training, and then they can use
12 their discretion to decide if something is
13 out of focus or not up to Shutterstock's
14 focus standards?

15 MS. LACKMAN: Same objection before
16 as to, "Discretion."

17 THE WITNESS: Yes.

18 BY MR. BURROUGHS:

19 Q And will the Shutterstock
20 reviewer also review a submission for
21 exposure?

22 MS. LACKMAN: Objection, vague.

23 THE WITNESS: Yes. Exposure is one
24 of the qualities checked.

25 //

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2 BY MR. BURROUGHS:

3 Q And similarly, does the
4 Shutterstock reviewer, after being trained
5 by Shutterstock, use his or her discretion
6 in accepting or rejecting a photograph due
7 to its exposure?

8 MS. LACKMAN: Same objection as
9 before.

10 THE WITNESS: Yes.

11 BY MR. BURROUGHS:

12 Q And will a reviewer look at the
13 lighting of a photograph in deciding
14 whether or not to approve or reject it?

15 A We would lump lighting in with
16 exposure.

17 Q And similarly, that reviewer is
18 trained by Shutterstock on what's
19 acceptable and up to Shutterstock's
20 standards, and then the reviewer uses his
21 or her discretion in deciding whether or
22 not to accept or reject the photograph on
23 that basis?

24 MS. LACKMAN: Objection. Compound.
25 Mischaracterizes the testimony.

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2 THE WITNESS: Yes.

3 BY MR. BURROUGHS:

4 Q Do the Shutterstock reviewers
5 review submissions for composition?

6 A Yes.

7 Q And do the Shutterstock
8 reviewers being trained by Shutterstock
9 have the discretion to accept or reject a
10 photograph based on its composition?

11 MS. LACKMAN: Same objections.

12 THE WITNESS: Yes.

13 BY MR. BURROUGHS:

14 Q Okay. And do Shutterstock
15 reviewers take into account whether or not
16 Shutterstock has too many works in a
17 particular category when reviewing
18 photographs submitted by contributors?

19 MS. LACKMAN: Objection, vague.

20 THE WITNESS: No.

21 BY MR. BURROUGHS:

22 Q For example, has Shutterstock
23 ever advised its reviewers, "Please don't
24 accept any more photographs of beach
25 sunsets because we have too many

1 H. SHIMMIN

2 photographs in that category"?

3 MS. LACKMAN: Objection. Asked and
4 answered.

5 THE WITNESS: No.

6 BY MR. BURROUGHS:

7 Q I'm going to hand you an exhibit
8 we're going to mark as Exhibit 2. I
9 believe it's titled Shutterstock
10 Contributor Success Guide, STK-1490-1509.
11 I want you to take a look at that. Tell
12 me if you've ever seen this before.

13 (Exhibit 2 was marked for
14 identification.)

15 A Yes.

16 Q What is it and where have you
17 seen this before?

18 A So this is available to our
19 contributors online. And it's part of
20 getting started or how to be a successful
21 contributor that we've put together for
22 our contributors to look through.

23 Q Okay. And is it fair to say
24 that Shutterstock provides this guide to
25 its contributors to provide it direction

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2 on how to upload material to Shutterstock
3 for Shutterstock's review and to be
4 successful in that process?

5 MS. LACKMAN: Objection. Misstates
6 testimony. Mischaracterizes the document.

7 THE WITNESS: I don't recall if it
8 goes into the ins and outs of reviewing.
9 My remembrance of this document is more
10 points of, you know, type of content and
11 angles and that sort of thing. I don't
12 recall whether or not it goes into the ins
13 and outs of review.

14 BY MR. BURROUGHS:

15 Q Well why does Shutterstock send
16 this success guide to its contributors?

17 MS. LACKMAN: Objection. Outside of
18 scope. Calls for speculation.

19 THE WITNESS: I don't have an
20 official Shutterstock response for that.
21 More of a personal experience in that many
22 people who submit to stock have never done
23 it before, and sometimes -- what we also
24 want to prevent is someone going through
25 all the process of submitting and

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2 keywording and tagging their content only
3 to have it rejected.

4 So, for example, often what
5 happens, our new contributors don't
6 realize that this image here, for example,
7 would require a valid model release. So
8 we want to set our contributors up for
9 success and not go through the pain of
10 submitting, say, 50 images of this runner
11 series only to have them all rejected. So
12 it's to help, and it's targeting new
13 contributors of -- so the rules of stock,
14 sort of what forms you need. What images
15 are popular, what customers often are
16 looking for. That sort of thing. It's
17 sort of a set them up for success.

18 BY MR. BURROUGHS:

19 Q Okay. So is it a guide to help
20 contributors successfully submit
21 photography for Shutterstock's review?

22 MS. LACKMAN: Objection. Misstates
23 the testimony.

24 THE WITNESS: I would say it's more
25 helping contributors select from their

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2 portfolio what images to submit. We don't
3 want them to submit their entire library.
4 There is an editing that the contributor
5 should do, not just submit every single
6 image they've taken.

7 BY MR. BURROUGHS:

8 Q Okay. And does Shutterstock
9 believe that if the contributor follows
10 this guide, the contributor is more likely
11 to have their photos approved by
12 Shutterstock?

13 MS. LACKMAN: Objection. Outside the
14 scope. Calls for speculation. Vague. No
15 foundation.

16 THE WITNESS: I don't necessarily
17 think this is trying to increase their
18 approval rate. I think this is more,
19 they'll be more successful as a
20 contributor -- I mean, I guess in theory,
21 by approval. I'm not sure how to answer
22 that one. We want our contributors to be
23 successful and we want them to submit
24 their best work and to think about what
25 they're shooting and what they're

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2 submitting.

3 BY MR. BURROUGHS:

4 Q Okay. Let's scroll down to the
5 next page. We're going to slowly walk
6 through this. If you want us to stop, you
7 need more time, let me know. Let's go
8 down to the next page. Let's go to the
9 next page. Let's go to the next page.
10 Let's go to the next page. Stop here for
11 one moment. Do you recall ever looking at
12 this text?

13 A I may have a while ago.

14 Q Okay. Let's go to the next
15 page. Okay, next page. All right. So
16 here it appears that Shutterstock's
17 indicating to potential contributors the
18 type of images that sell. Would you
19 agree?

20 MS. LACKMAN: Objection, vague.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q Okay. And when Shutterstock
24 reviews images, do they review images to
25 make sure that they're sharp and high-

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2 resolution?

3 MS. LACKMAN: Objection. Asked and
4 answered.

5 THE WITNESS: As I said before,
6 there's a minimum requirement that's
7 automatically rejected if they don't have
8 high enough file size. As far as
9 sharpness goes, like I said before, it
10 really depends on the image. If there's a
11 certain level of -- for the subject
12 matter, a certain level of focus that is
13 required.

14 BY MR. BURROUGHS:

15 Q And when you say there's an
16 automatic minimum size, if the photo
17 doesn't meet that automatic minimum, it
18 can't even be uploaded to Shutterstock,
19 correct?

20 A It will be automatically
21 rejected when the contributor hits
22 submit -- no, I'm sorry. Upon upload.
23 Sorry, it's been a while since I've
24 submitted. When the contributor submits
25 it to his portal, he'll get a message that

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2 automatically says, "This file is not big
3 enough."

4 Q Okay. So that won't even go
5 into the reviewer queue, correct?

6 A No, it won't.

7 Q Okay. So when the reviewer's
8 reviewing for sharpness and resolution,
9 it's making a review in addition to that
10 automated process, correct?

11 MS. LACKMAN: Objection to the extent
12 it misstates testimony.

13 THE WITNESS: Well, the automatic
14 rejection is -- well, not rejection. The
15 site not allowing the submitted -- portal
16 doesn't allow for under a certain file
17 size, which is four megapixels. So that's
18 a separate issue than sharpness or
19 resolution.

20 BY MR. BURROUGHS:

21 Q Okay. And the reviewer will
22 review the photograph for those issues as
23 well, correct?

24 MS. LACKMAN: Objection. Vague as
25 to, "Those issues," and, "As well."

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2 THE WITNESS: Yes. The reviewer
3 looks at a list of quality and compliance
4 standards.

5 BY MR. BURROUGHS:

6 Q All right. Let's go to the next
7 page. The next page. Next page. So here
8 you see five ingredients of top-selling
9 stock. Do you see that?

10 A Yes.

11 Q You used the term, "Stock,"
12 earlier. What does, "Stock," mean to you?

13 A Stock is a way of classifying
14 assets where it's not bespoke to the
15 product. Contributors independently go
16 out, and we'll just talk about
17 photographs, they'll go, they'll do a
18 shoot on their own, whatever they want to
19 submit. They come back and submit it to
20 Shutterstock, and stock is a repository of
21 content that third parties and come and
22 license for their project. They're not
23 hiring this photographer. They're not
24 communicating with this photographer what
25 they want. But maybe they're opening up a

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diner and they love this couple having a waffle. They thought it'd be perfect for their small town diner and they thought it would be great for their campaign. So it's bringing artists and clients together in a way that benefits both.

BY MR. BURROUGHS:

Q So is Shutterstock advising its contributors that Shutterstock will be able to more successfully license their work if it has commercial value, diverse locality, room for text, emotional characteristics, and aspiring real moments?

MS. LACKMAN: Objection. Misstates testimony.

THE WITNESS: These are suggestions that will help contributors produce work that hopefully will make the contributor money, and clients will find it and license it.

THE REPORTER: Will find what?

THE WITNESS: Will find it and license it.

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2 BY MR. BURROUGHS:

3 Q Okay. Let's go to the next
4 page. Next page. All right. Now does
5 this page reflect the beginnings of the
6 process that we discussed earlier?

7 MS. LACKMAN: Objection. Vague. You
8 can answer if you know.

9 THE WITNESS: Yeah. It's a high-
10 level guide of getting contributors
11 started.

12 BY MR. BURROUGHS:

13 Q And paragraph 5,
14 submit.shutterstock.com, is that the same
15 link that you advertised on your website
16 when marketing to potential contributors
17 for Shutterstock?

18 A I believe that's the page it
19 goes to.

20 Q Let's go to the next page of
21 this exhibit. Let's go to the next
22 page -- go to the next page. Okay. So
23 take a moment and look at these numbered
24 paragraphs and tell me if those -- are all
25 bases on which reviewers review

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2 submissions at Shutterstock.

3 MS. LACKMAN: Object to that term,
4 "Bases." It misstates testimony.

5 THE WITNESS: Reviewers look at all
6 these things. There are other things that
7 they look at.

8 BY MR. BURROUGHS:

9 Q Okay. So before an image will
10 go live on Shutterstock's site, a
11 Shutterstock reviewer will review it for
12 focus, composition, lighting, and noise
13 issues, correct?

14 A Amongst other things, yes.

15 Q Okay. And Shutterstock provides
16 a blog and other guidelines to advise
17 contributors on how to best meet those
18 standards, correct?

19 MS. LACKMAN: Objection to the extent
20 it's outside the scope and calls for
21 speculation.

22 THE WITNESS: I don't know if I would
23 stay how to meet the standards. I would
24 say Shutterstock has all sorts of blogs
25 and some videos that show contributors how

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2 to get better shots or how to set up
3 lighting or how to get better, you know,
4 how to do a time-lapse, for example. But
5 these are pretty basic elements of
6 photography. We're not necessarily
7 saying, you know, "This is what aperture
8 is, and this is how to get a shallow depth
9 of field." It's more, this is high-level,
10 you know, things to look at when you're
11 shooting, things to think about.

12 BY MR. BURROUGHS:

13 Q So does Shutterstock provide
14 blogs and guidelines and videos to its
15 contributors so that the contributors
16 would be less likely to have their images
17 rejected by Shutterstock?

18 MS. LACKMAN: Objection. Calls for
19 speculation.

20 THE WITNESS: That could be one way
21 of putting it.

22 BY MR. BURROUGHS:

23 Q So that's fair to say?

24 A Yes.

25 Q All right. Let's go to the next

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2 page. Let's go to the next page. All
3 right. So does this page accurately
4 reflect how Shutterstock pays royalty fees
5 to its contributors?

6 MS. LACKMAN: Objection. Compound.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A Yes, it explains royalties.

10 Q Okay. And are you familiar with
11 that link at the bottom of that left
12 column that leads to the schedule of
13 earnings on Shutterstock's site?

14 A Yes.

15 Q And at that link, is there
16 information detailing the royalty payments
17 and how they're made by Shutterstock to
18 the contributors?

19 A It won't say how it's made. It
20 will just say -- it's broken down by day,
21 and it will say, is it a video license, a
22 footage license? I think enhanced license
23 has its own tab. This way the contributor
24 can have a glance and see -- say you made
25 ten dollars and how that ten dollars got

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2 there.

3 Q Will it be allocated to a
4 particular photograph, for example, that
5 the photographer contributed?

6 A Yes.

7 Q Let's go to the next page. And
8 the next page. And the next page -- all
9 right. We can pull that exhibit down.
10 I'm going to put another exhibit in front
11 of you that we're going to mark as Exhibit
12 3. This is STK-4290 to 4303. How to
13 Review Photos: Exposure. We'll scroll
14 through it, and can you tell me if you've
15 seen this before? I'll try to go slowly.
16 If you want us to go slower, or you want
17 us to go faster, just let us know. All
18 right. Do you recognize this document?

19 (Exhibit 3 was marked for
20 identification.)

21 A Yes. It's part of the high-
22 level guidelines for reviewers.

23 Q So does this reflect at least
24 some of the things that a reviewer should
25 look for when deciding whether or not to

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2 approve a photograph for use on
3 Shutterstock's site?

4 MS. LACKMAN: Objection. Misstates
5 the testimony.

6 THE WITNESS: Yes. Exposure is
7 something to look for.

8 BY MR. BURROUGHS:

9 Q And using the example of lens
10 flare -- well, let me ask you. What is
11 lens flare?

12 A Lens flare is when the angle of
13 the light hits the lens in that it creates
14 a flare or a sunburst or an additional
15 effect that can be wanted or can not be
16 wanted. It depends.

17 Q Okay. So sometimes, some may
18 say too often, people will create a lens
19 flare on purpose, right?

20 MS. LACKMAN: Objection. Calls for
21 speculation as to, "Too often."

22 THE WITNESS: A lens flare can be
23 created on purpose.

24 BY MR. BURROUGHS:

25 Q And at other times, the lens

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2 flare is created by mistake, correct?

3 MS. LACKMAN: Objection as to the
4 extent this is seeking expert testimony.

5 THE WITNESS: It can be a mistake,
6 and sometimes it's a happy accident.

7 BY MR. BURROUGHS:

8 Q And is it fair to say that the
9 Shutterstock reviewer can look at examples
10 of lens flare and use his or her
11 discretion in deciding whether or not it
12 adds to the photograph or makes it
13 commercial unviable?

14 MS. LACKMAN: Objection. Compound.
15 Calls for speculation. Mischaracterizes
16 prior testimony.

17 THE WITNESS: Reviewers can use their
18 discretion.

19 BY MR. BURROUGHS:

20 Q So they can look at a lens flare
21 and say, "That ruins the photograph.
22 We're going to reject it," correct?

23 A Yes. They can do that.

24 Q Okay. Are there any
25 subcategories under exposure or directions

1 H. SHIMMIN

2 relating to reviewing exposure that aren't
3 in these review photo guidelines here?

4 MS. LACKMAN: Objection to the
5 characterization of the document.

6 THE WITNESS: It appears they covered
7 the most common issues that come up with
8 exposure.

9 BY MR. BURROUGHS:

10 Q I'm going to put another
11 document in front of you. We're going to
12 mark as Exhibit 4. This one is How To
13 Review Photos: Focus. I want you to take
14 a look at it. It's STK-4304-4317. We'll
15 scroll through this one as well. Tell us
16 if you want to go faster or slower. All
17 right. Do you recognize this document?

18 (Exhibit 4 was marked for
19 identification.)

20 A Yes.

21 Q Okay. What is it and how do you
22 recognize it?

23 A This is part of the reviewer
24 guidelines, and it gives reviewers a high-
25 level look at focus.

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2 Q Okay. And the reviewers use
3 this when making decisions on whether or
4 not to approve or reject a photograph
5 submitted by a contributor, right?

6 MS. LACKMAN: Objection, vague.

7 THE WITNESS: It's part of their
8 training, and they have access to this.
9 So it's part of what they would use to
10 judge an image that might be on -- they
11 weren't sure about.

12 BY MR. BURROUGHS:

13 Q Okay. Now does Shutterstock
14 have focus standards for commercial
15 photos?

16 MS. LACKMAN: Objection as to, "Focus
17 standards." Vague.

18 THE WITNESS: Shutterstock has
19 guidelines. Because photography is an
20 art, there's some -- you can't just say,
21 "This is yes, this is no." So we create
22 things like this to train reviewers of --
23 technically it's not in focus, but in this
24 instance it works. You know, like a bokeh
25 or the motion blur -- that some of the

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2 examples they have. So we try to give
3 them guidelines of, you know, even though
4 it might not be 100 percent in focus, it's
5 acceptable.

6 BY MR. BURROUGHS:

7 Q Okay. But if you look at the
8 bottom of the first page here, is it fair
9 to say that Shutterstock also has, quote,
10 "Focus Standards for Commercial Photos"?

11 A There are standards. I just
12 want to clarify that these are guidelines,
13 because it's not a black-and-white issue.
14 Yes, there are standards, but these are
15 guidelines that we don't want them to
16 reject something because it's technically
17 out of focus. Is what I'm trying to
18 convey.

19 THE REPORTER: Again, you're drifting
20 out.

21 THE WITNESS: Oh, sorry. I'm trying
22 to convey that it's not a strict yes or
23 no. We don't want something rejected
24 because it's technically out of focus.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. So is it fair to say that
4 these are guidelines that Shutterstock
5 provides, but the Shutterstock reviewer
6 still has their discretion in applying the
7 guidelines?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: Yes. Reviewers have
10 direction to approve or reject based on
11 focus.

12 BY MR. BURROUGHS:

13 Q Okay. And isn't it true that
14 Shutterstock also has exposure standards
15 for commercial photos?

16 MS. LACKMAN: Objection. Misstates
17 testimony.

18 THE WITNESS: Everything's a
19 guideline. On these technical issues. We
20 do have sort of high-level, low-level, the
21 lease we'll accept, but again, these are
22 guidelines. We have -- like I said, where
23 something might be overexposed and it
24 works.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. But looking again at this
4 first page, "Focus Standards for
5 Commercial Photos." You see that? And
6 then there's a link to the manual for the
7 focus standards.

8 A Yes, I do see that.

9 Q Okay, so my question is, does
10 Shutterstock have focus standards for
11 commercial photos?

12 MS. LACKMAN: Objection. Asked and
13 answered.

14 BY MR. BURROUGHS:

15 Q Go ahead.

16 A There are baseline standards,
17 but it's not an absolute yes or no. These
18 are guidelines.

19 Q Okay. And does Shutterstock
20 also have exposure standards for
21 commercial photos?

22 MS. LACKMAN: Objection. Asked and
23 answered.

24 THE WITNESS: Same answer.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. Other than those two,
4 does Shutterstock have any other standards
5 for commercial photos?

6 MS. LACKMAN: Objection. Misstates
7 testimony.

8 THE WITNESS: There's other quality
9 issues we look at.

10 BY MR. BURROUGHS:

11 Q Okay. Do you have other
12 standards like you do for, for example,
13 focus here?

14 MS. LACKMAN: Objection. Misstates
15 testimony. No foundation.

16 THE WITNESS: There's a base
17 guideline as far as, you know, this is a
18 minimum standard, but at the same time,
19 it's not a black-and-white standard is the
20 best way I can explain it.

21 BY MR. BURROUGHS:

22 Q Understood. So earlier you
23 referred to bokeh, right, or the bokeh
24 style.

25 A Yeah.

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2 Q All right, and that's, you know,
3 I'll editorialize a little bit, but kind
4 of like a lens flare in that sometimes it
5 might be on purpose and sometimes it might
6 be a mistake, right?

7 MS. LACKMAN: Objection. Confusing.

8 THE WITNESS: It's possible to do it
9 intentionally or unintentionally.

10 BY MR. BURROUGHS:

11 Q So again, does the Shutterstock
12 reviewer have discretion to decide whether
13 or not a focus issue with a photograph is
14 on purpose or by mistake?

15 MS. LACKMAN: Objection. Calls for
16 speculation. The foundation is the
17 contributor's mental state?

18 THE WITNESS: As our reviewers are
19 humans, they obviously can think for
20 ourselves. We give them guidelines and we
21 try to give them the best tools possible
22 to review photos and to use their best
23 judgment based on the guidelines we give
24 them.

25 //

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2 BY MR. BURROUGHS:

3 Q Okay. And let me ask the
4 question a little bit better. Does the
5 Shutterstock reviewer, with these
6 guidelines in mind, have the discretion to
7 decide whether blurriness adds to or
8 subtracts from a submitted photograph's
9 commercial appeal?

10 MS. LACKMAN: Objection. Asked and
11 answered. No foundation.

12 THE WITNESS: A contributor has
13 the -- I mean, our reviewer has the
14 discretion to accept or approve an image
15 solely based on focus. At their
16 discretion.

17 BY MR. BURROUGHS:

18 Q Okay. I'm going to put a
19 document in front of you we're going to
20 mark as Exhibit 5. This one is,
21 Protecting Your Content: A Guide. STK
22 2318-2401. We'll scroll through this real
23 briefly. You can tell me if you're
24 familiar with the document. All right.
25 Do you recognize this document?

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2 (Exhibit 5 was marked for
3 identification.)

4 A Yeah.

5 Q Okay. How do you recognize it
6 and what is it?

7 A This is another resource we have
8 available to contributors regarding
9 copyright and IP and their work.

10 Q Okay. So is this additional
11 information that Shutterstock provides to
12 contributors in connection with the
13 working relationship?

14 A Yes.

15 Q Okay. And I want you to take a
16 look at this page, 2340. Does this
17 accurately reflect the flow of the
18 photography from contributor to end user?

19 MS. LACKMAN: Do you mind scrolling
20 up, because I can't see the top. I just
21 couldn't read the top line. Thanks.

22 THE WITNESS: It's mostly true.

23 Number 4 has changed slightly since this
24 was published.

25 //

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2 BY MR. BURROUGHS:

3 Q How has that changed?

4 A It's no longer -- contributors'
5 earnings are no longer based on -- I mean,
6 their royalties are no longer based on
7 their earnings but number of either images
8 or videos sold.

9 Q Okay -- but is it still the case
10 that Shutterstock, after approving a
11 contributor's photography, will license
12 that photography to Shutterstock customers
13 and then pay royalties to the contributor?

14 A Yes.

15 Q Okay. Does Shutterstock assign
16 any code or reference to a particular
17 asset or photograph?

18 MS. LACKMAN: Objection. Vague.
19 Compound.

20 THE WITNESS: An ID number is
21 assigned to every asset that's submitted.

22 BY MR. BURROUGHS:

23 Q Okay. And how are those number
24 generated?

25 MS. LACKMAN: Objection. Vague.

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2 Outside the scope.

3 THE WITNESS: I don't know.

4 BY MR. BURROUGHS:

5 Q Okay. Do you know if they're
6 sequential?

7 MS. LACKMAN: Objection. Calls for
8 speculation.

9 THE WITNESS: I do not know how
10 they're generated.

11 BY MR. BURROUGHS:

12 Q For example, if I were to upload
13 a photograph that was approved by
14 Shutterstock today, would the number for
15 that be lower than the number that I would
16 get if I did so in three months?

17 MS. LACKMAN: Objection. Calls for
18 speculation to the foundation.

19 THE WITNESS: I mean, the numbers
20 obviously get larger. I don't know if
21 it's 1-2-3-4-5. I'm not sure what the --
22 numbering system, how it's generated. But
23 it would be a larger number submitted
24 later than an earlier image, for example.

25 MR. BURROUGHS: Okay. I see it's

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2 12:20. Do we want to take a lunch break
3 now, or is everybody still all right?

4 THE REPORTER: Are we going to go
5 past like 1:30?

6 MR. BURROUGHS: Probably. Oh, for
7 lunch, or for the whole depo?

8 THE REPORTER: The whole depo.

9 MR. BURROUGHS: Yes.

10 THE REPORTER: All right. Off the
11 record, 12:21 p.m.

12 (Off the record.)

13 THE REPORTER: We're back on the
14 record at 1:11 p.m.

15 BY MR. BURROUGHS:

16 Q All right. You understand
17 you're still under oath?

18 A Yes.

19 Q Okay. I'm going to put an
20 exhibit in front of you. We're going to
21 mark as Exhibit 6. It's a series of
22 photographs. And we'll scroll through it.
23 It is 153 pages, so we'll do it relatively
24 quickly. If you want us to go slower --
25 While you're reviewing those, have you

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2 ever seen these photographs before?

3 (Exhibit 6 was marked for
4 identification.)

5 A I've seen a few of them.

6 Q Okay. Do you understand -- or
7 have you ever seen this document before?

8 A No, I have not.

9 Q Okay. Do you understand that
10 the photographs in Exhibit 6 are the
11 photographs at issue in this case?

12 A I do now.

13 Q Okay. Had you a chance, before
14 today, to review the photographs at issue
15 in this case?

16 A I haven't looked at all of the
17 images at issue.

18 Q Have you looked at certain of
19 them?

20 A I've seen a few. That's all.

21 Q As you sit here today, you
22 haven't seen all of the photographs at
23 issue in this case, is that correct?

24 A No, I have not.

25 Q Okay. We'll give you some time

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2 to review this, and I'll represent to you
3 that this is from this case, and these are
4 the photographs that Dr. McGucken alleges
5 were exploited by Shutterstock without his
6 consent. Tell us if you want to go slower
7 or faster. We'll give you some time to
8 review these. Okay. Do you need to go
9 back to any particular page or look at any
10 particular photograph again?

11 A Not at the moment.

12 Q Okay. And if the photographs in
13 Exhibit 6 appeared on Shutterstock's site
14 for licensing, that would mean that
15 Shutterstock's reviewer team reviewed and
16 approved those photos, correct?

17 MS. LACKMAN: Objection to the extent
18 it calls for speculation.

19 THE WITNESS: If the image is on site
20 available for licensing, then yes, it was
21 approved.

22 BY MR. BURROUGHS:

23 Q Okay. And Shutterstock licensed
24 McGucken's photographs approximately 930
25 times, is that correct?

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2 A That's my understanding, yes.

3 Q Okay. And where did you find
4 that information?

5 A It was in part of the
6 documentations I read regarding the case.

7 Q Okay. Did you see those actual
8 licenses?

9 MS. LACKMAN: Objection. Vague.

10 THE WITNESS: I saw the certain -- a
11 list of licenses. I didn't go through
12 line-by-line to see what was licensed to
13 them.

14 BY MR. BURROUGHS:

15 Q Okay. And how was that list of
16 licenses generated?

17 A We have a report we can run, and
18 then we can export it as a .csv file.

19 Q Okay. And what does that report
20 include?

21 A It includes the asset ID number,
22 the name of the -- username of the client
23 who licensed it. The date, the type of
24 license. And some of the licensee's
25 contact information. Like the location,

1 H. SHIMMIN

2 city and such.

3 Q Okay. When you search for a
4 particular photograph in Shutterstock's
5 system, is using the asset ID number the
6 easiest way to do so?

7 MS. LACKMAN: Objection to the extent
8 it calls for speculation outside the
9 scope.

10 THE WITNESS: When you mean -- as an
11 employee or as a person looking for an
12 image --

13 BY MR. BURROUGHS:

14 Q As an employee.

15 A Yes, the asset ID is the easiest
16 way to locate an asset.

17 Q Okay. And when you input the
18 asset ID, does it identify for you
19 everywhere that that photo was displayed
20 and all the licensees for that photo?

21 MS. LACKMAN: Objection, vague as to,
22 "Photo."

23 THE WITNESS: No.

24 BY MR. BURROUGHS:

25 Q Okay. What does it display when

1 H. SHIMMIN

2 you enter the asset ID number?

3 A It depends on what -- where you
4 input that asset ID number.

5 Q Okay. What are the locations at
6 which you can input an asset ID number?

7 A Usually on the site itself, or
8 we have an internal tool called Inventory
9 Manager.

10 THE REPORTER: Sorry, one more time.

11 THE WITNESS: Inventory Manager.

12 It's an internal tool we have.

13 BY MR. BURROUGHS:

14 Q Okay. If you input the asset ID
15 number for a particular photograph in
16 Inventory Manager, what information are
17 you fed?

18 A It shows whether it was approved
19 or rejected. It shows the asset ID
20 number, the date it was submitted, the
21 date it was reviewed, the name of the
22 contributor, and the number of licenses it
23 has.

24 Q Okay. And can you further
25 click -- go ahead.

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2 A I'm sorry, I just remembered.
3 Who the reviewer was.

4 Q Okay. And can you further click
5 through to see who those licensees were?

6 A No, not at this -- not in
7 Inventory Manager.

8 Q Does Inventory Manager show you
9 the URLs at which Shutterstock displays
10 the image?

11 MS. LACKMAN: Objection, vague as to,
12 "Image."

13 THE WITNESS: No.

14 BY MR. BURROUGHS:

15 Q Where would you look to find the
16 URLs for Shutterstock's display of a
17 particular photograph?

18 MS. LACKMAN: Same objection. Vague.

19 THE WITNESS: I would have to make
20 the request to an engineer.

21 BY MR. BURROUGHS:

22 Q And how would that be done?

23 A It would be either a request
24 through Slack, but then they would most
25 likely reroute me to make a Jira ticket.

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2 Q Okay. And then you would submit
3 that ticket, and they would either reach
4 out to you with additional questions or
5 they would act on the ticket?

6 A Yes.

7 Q Okay. What does Shutterstock
8 use the asset ID number for, other than
9 identifying a particular photograph or
10 asset?

11 MS. LACKMAN: Objection, vague. Out
12 of scope.

13 THE WITNESS: I mean, it
14 identifies -- it's associated with a
15 specific image. That's how we would
16 locate that image.

17 BY MR. BURROUGHS:

18 Q Does Shutterstock provide the
19 asset ID number to third-party partners?

20 MS. LACKMAN: Objection, vague. Also
21 legal conclusion as to, "Partners." No
22 foundation for third-party partners.

23 THE WITNESS: Not sure what you mean.
24 If customers want an ID number, they can
25 find it for themselves if the image is

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2 live on the site. We're not going to go
3 hunting around for an image without an ID
4 number.

5 BY MR. BURROUGHS:

6 Q Does Shutterstock have a
7 relationship with third-party image sites
8 like TinEye?

9 MS. LACKMAN: Objection to the term,
10 "Third-party image sites." Outside the
11 scope.

12 THE WITNESS: I don't know the
13 details but Shutterstock does have an
14 agreement with TinEye.

15 BY MR. BURROUGHS:

16 Q Okay. And TinEye will, at
17 times, display Shutterstock content,
18 correct?

19 MS. LACKMAN: Objection. Vague as
20 to, "Shutterstock content."

21 THE WITNESS: It does -- it can
22 display Shutterstock images that are
23 submitted to Shutterstock, yes.

24 BY MR. BURROUGHS:

25 Q Okay. And Shutterstock makes

1 H. SHIMMIN

2 those images available to TinEye, correct?

3 MS. LACKMAN: Objection. Vague as
4 to, "Images."

5 THE WITNESS: TinEye is an API
6 partner. So TinEye has access to
7 Shutterstock's library. So we are not
8 choosing which images are displayed.

9 BY MR. BURROUGHS:

10 Q So if an image is live on
11 Shutterstock's site and this third party
12 like TinEye has the API link to that
13 content, that third party can display that
14 content, correct?

15 MS. LACKMAN: Objection. Calls for a
16 legal conclusion and expert opinion as to
17 display. Vague as to, "Link."

18 BY MR. BURROUGHS:

19 Q Go ahead.

20 A If an image were approved on the
21 site, it could show up through a search on
22 TinEye, but it does not necessarily mean
23 that that image is available to be
24 licensed.

25 Q Does Shutterstock's agreement

1 H. SHIMMIN
2 with TinEye also include Shutterstock
3 being able to put advertisements on
4 TinEye?

5 MS. LACKMAN: Objection. No
6 foundation. Outside the scope. Vague as
7 to, "Advertisements on TinEye."

8 THE WITNESS: I don't know the exact
9 details of our relationship with TinEye.
10 BY MR. BURROUGHS:

11 Q Do you know if it allows for
12 Shutterstock advertising on TinEye's site?

13 A I don't know the relationship
14 that Shutterstock has with TinEye. I know
15 that they have an API partner, and they
16 have access to the library. I don't know
17 the details of how that relationship
18 works.

19 Q What other API partners does
20 Shutterstock have?

21 A We have a bunch. Facebook is
22 another. So if you as a lawyer wanted to
23 have a Facebook ad for your business,
24 Facebook is an API partner, so it has
25 access to our library, so you could choose

1 H. SHIMMIN

2 an image within Facebook to use in your
3 campaign without leaving Facebook. You
4 wouldn't have to come Shutterstock license
5 it and come back. For example.

6 Q Okay, any others.

7 A Yeah, there's a bunch. There's
8 Adobe. There's -- who else? There's,
9 like, art.com, fineartprints,
10 fineartamerica.com --

11 THE REPORTER: What? Louder. You've
12 got to speak louder.

13 THE WITNESS: fineartamerica. I
14 think artprint.com is another one.
15 BY MR. BURROUGHS:

16 Q And each of those sites have
17 access to Shutterstock's photography and
18 can display Shutterstock's photography via
19 the Shutterstock API, correct?

20 MS. LACKMAN: Objection. Vague.
21 Compound. Vague as to, "Photography."
22 Legal conclusion as to, "Display."

23 THE WITNESS: Every agreement is
24 slightly different. Some agreements allow
25 access to the whole library, or some just

1 H. SHIMMIN
2 a certain part of the library or certain
3 topics. The idea is that, through this
4 other site, they can access some content
5 and license it via this API through
6 Shutterstock.

7 BY MR. BURROUGHS:

8 Q Okay. Is Hello RF an API
9 partner of Shutterstock?

10 MS. LACKMAN: Objection to the
11 term -- to the extent that the term,
12 "Partner," refers to a legal conclusion.

13 THE WITNESS: Hello RF is an
14 authorized reseller.

15 BY MR. BURROUGHS:

16 Q Okay. And explain the
17 authorized reseller relationship.

18 MS. LACKMAN: Objection. Outside the
19 scope.

20 THE WITNESS: I don't know the
21 specifics of Hello RF, but generally
22 speaking, we have authorized resellers in
23 countries that either have more
24 complicated laws or it just makes more
25 sense business-wise to have a local firm.

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2 So our content, through that company and
3 not through Shutterstock. There's a lot
4 of technicalities and legalities that we
5 as an American company don't understand in
6 China, so it makes better sense to have a
7 Chinese company be a reseller.

8 BY MR. BURROUGHS:

9 Q Okay. And are Shutterstock's
10 authorized resellers able to sell
11 Shutterstock content that Shutterstock
12 provides to the reseller?

13 MS. LACKMAN: Objection. Outside the
14 scope.

15 THE WITNESS: No. The content is
16 still licensed through Shutterstock. The
17 authorized reseller would be, say, a
18 portal. So they are not selling it.
19 Shutterstock still is.

20 BY MR. BURROUGHS:

21 Q Understood. So the Shutterstock
22 content would appear on the third-party
23 reseller site, but the sales of licenses
24 for that content would still be directly
25 with Shutterstock, correct?

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2 MS. LACKMAN: Objection. Vague as
3 to, "Shutterstock content."

4 THE WITNESS: Yes. My understanding
5 is yes.

6 BY MR. BURROUGHS:

7 Q Okay. Does Shutterstock have a
8 relationship with Stock Fresh?

9 A I don't know.

10 Q Okay. Have you ever heard of
11 that company?

12 A No, I am not familiar with Stock
13 Fresh.

14 Q Okay. What other authorized
15 resellers does Shutterstock work with?

16 MS. LACKMAN: Objection. Misstates
17 the testimony as to, "Other authorized
18 resellers."

19 THE WITNESS: We have a bunch. We
20 have one in Russia called Fotodom.

21 BY MR. BURROUGHS:

22 Q Can you spell that?

23 A I think it's F-O-T-O-D-O-M. I'm
24 trying to think offhand. There's quite a
25 few. I don't work in the space with

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2 resellers, so I'm not terribly up to snuff
3 on our whole list of resellers.

4 MS. LACKMAN: And again, this is out
5 of the scope of the 30(b)(6) notice.

6 BY MR. BURROUGHS:

7 Q Other than the API partners and
8 the authorized resellers, does
9 Shutterstock work with any other third
10 parties with regard to licensing its
11 content?

12 MS. LACKMAN: Objection, vague.

13 THE WITNESS: Possibly, but I can't
14 specifically say.

15 BY MR. BURROUGHS:

16 Q Does Shutterstock work with any
17 advertising companies that will display
18 Shutterstock photography on third-party
19 websites?

20 MS. LACKMAN: Objection. Calls for a
21 legal interpretation. Calls for
22 speculation. Outside the scope. No
23 foundation.

24 THE WITNESS: It essentially runs --
25 you know, has an ad campaign. I don't

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2 work in the marketing department, so I
3 have no idea what the arrangements are or
4 what they look like.

5 BY MR. BURROUGHS:

6 Q Okay. Now per that ad campaign,
7 does Shutterstock Photography show up on
8 other sides when visited by someone who's
9 visited a Shutterstock page?

10 MS. LACKMAN: Objection, foundation.
11 Confusing.

12 THE WITNESS: Certain types of ads
13 are generated by a user's search history,
14 like most online advertisements. So it's
15 possible.

16 BY MR. BURROUGHS:

17 Q And that will include
18 Shutterstock photographs in the ads?

19 MS. LACKMAN: Objection. Calls for
20 speculation. Outside the scope.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q Okay. So for example, if I look
24 at a particular photograph on Shutterstock
25 and then I go read a website about soccer,

1 H. SHIMMIN

2 I may see a Shutterstock ad on that
3 website with the photograph that I looked
4 at on Shutterstock?

5 MS. LACKMAN: Calls for speculation.
6 You can answer if you know.

7 THE WITNESS: It's possible, yes.

8 BY MR. BURROUGHS:

9 Q And is Shutterstock currently
10 running that type of campaign?

11 MS. LACKMAN: Objection. Misstates
12 the testimony as to, "Campaign."

13 THE WITNESS: I don't know. I have
14 no idea what the marketing department is
15 doing.

16 BY MR. BURROUGHS:

17 Q Okay. Do you know when they
18 started doing that type of advertising?

19 MS. LACKMAN: Objection to
20 foundation.

21 THE WITNESS: No.

22 BY MR. BURROUGHS:

23 Q Have they been doing it the
24 entire time you've been at Shutterstock?

25 MS. LACKMAN: Objection, calls for

1 H. SHIMMIN

2 speculation. Outside the scope.

3 THE WITNESS: I don't know.

4 BY MR. BURROUGHS:

5 Q When did you start working at
6 Shutterstock?

7 A When? October 2015.

8 Q Okay. And what was your
9 position when you first started working at
10 Shutterstock?

11 A I was a review coordinator.

12 Q Okay. Are you an employee of
13 Shutterstock at the time?

14 A Yes.

15 Q And folks would come to you with
16 questions about whether or not
17 Shutterstock should approve or reject a
18 particular photograph?

19 MS. LACKMAN: Objection. Outside the
20 scope. Calls for speculation.

21 THE WITNESS: The reviewers would ask
22 me questions about review, yes.

23 BY MR. BURROUGHS:

24 Okay. And would you make the
25 final decision as to whether a photograph

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1 H. SHIMMIN

2 would be accepted or rejected by
3 Shutterstock?

4 MS. LACKMAN: Objection. Vague,
5 compound.

6 THE WITNESS: Occasionally.

7 BY MR. BURROUGHS:

8 Q Okay. And at times, did you
9 advise the reviewers that they should
10 reject particular photographs?

11 A Yes.

12 Q Okay. When you started in 2015,
13 can you estimate for me what percentage of
14 photographs you were rejecting?

15 MS. LACKMAN: Objection. You're
16 asking in her own personal capacity or in
17 Shutterstock's capacity?

18 BY MR. BURROUGHS:

19 Q Personally.

20 A I think we were rejecting around
21 15 percent or less.

22 Q Okay. And do you recall what
23 the company was rejecting, percentage-
24 wise, at that time?

25 MS. LACKMAN: Objection. Outside of

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1 H. SHIMMIN

2 the scope.

3 THE WITNESS: You mean across all
4 asset types? Those numbers are different
5 between, you know, videos and images and
6 illustrations.

7 BY MR. BURROUGHS:

8 Q Okay. Let's go with
9 photography.

10 A About ten to 15 percent were
11 rejected.

12 Q Has that percentage stayed the
13 entire time you've personally been at
14 Shutterstock?

15 MS. LACKMAN: Objection, outside the
16 scope.

17 THE WITNESS: Roughly --

18 MS. LACKMAN: Sorry, vague as to,
19 "That percentage."

20 MR. BURROUGHS: And Madam Court
21 Reporter, you got the response?

22 THE REPORTER: "Roughly." That's
23 what I heard.

24 THE WITNESS: Roughly ten to 15
25 percent.

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2 BY MR. BURROUGHS:

3 Q Are you still in that title at
4 Shutterstock?

5 A No.

6 Q What title did you have after
7 the quality position?

8 A Intellectual property agent.

9 Q And as an IP agent or
10 intellectual property agent, what were you
11 doing?

12 A I would look at copyright
13 issues, intellectual property. I would
14 help either contributors -- for example if
15 they sent in DMC notices or complained,
16 had some sort of IP complaint or question
17 whether a client had the proper license, I
18 could help investigate to see if their
19 image was licensed property. I also
20 helped clients if they had a third-party
21 claim against an asset they licensed
22 through us. Top-level domain, branding
23 infringements. Trademark infringements,
24 unauthorized resellers.

25 Q So is part of that role

1 H. SHIMMIN
2 enforcing Shutterstock or its
3 contributors' intellectual property
4 against outside infringers?

5 MS. LACKMAN: Objection. Compound.

6 THE WITNESS: Shutterstock does not
7 enforce on behalf of the contributor per
8 se. We want to make sure that proper
9 license is acquired, or if they don't have
10 any license, to do our best to get the
11 customer to license it properly. But if
12 we are unable to do that, the enforcement
13 is on the contributor.

14 BY MR. BURROUGHS:

15 Q Okay. And what year did you
16 move into that role?

17 A 2019.

18 Q Okay. So about four years after
19 you joined the company?

20 A Yeah.

21 Q Okay. And were you trained at
22 Shutterstock on intellectual property
23 issues?

24 A Yes.

25 Q And what form did that training

1 H. SHIMMIN

2 take?

3 A I had a lot of training from my
4 boss at the time, support from my
5 colleague on the team, and then I would do
6 a lot of outside research on my own.

7 Q What type of research?

8 A Well, I do like LinkedIn
9 learning or webinars and such to --

10 THE REPORTER: Webinars?

11 THE WITNESS: Webinars.

12 BY MR. BURROUGHS:

13 Q Now did Shutterstock ask you to
14 do that, or did you do that because you
15 found the information interesting or
16 simply wanted to learn about it?

17 A It was my own desire to learn
18 more about the space, and I also find it
19 interesting, so it was a topic I enjoy.

20 Q Okay. Did you personally review
21 the claims of infringement by Dr. McGucken
22 to see whether or not you thought those
23 violated an IP policy?

24 MS. LACKMAN: Objection. No

25 foundation. You mean in -- sorry, you can

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2 answer.

3 THE WITNESS: I didn't personally
4 review any of his images --

5 BY MR. BURROUGHS:

6 Q The on-the-job learning that you
7 did with your colleagues, was that formal
8 or were you just learning by watching them
9 do their job?

10 A It was formal training.

11 Q Were you given textbooks or
12 materials or other information to learn in
13 that regard?

14 A Not a textbook. I would be
15 trained on a task and do it and then more
16 tasks would be added that built on the
17 previous task.

18 Q Okay. And was there anything
19 else that was part of that educational
20 process?

21 A Nothing jumps to mind.

22 Q Okay. And are you still in that
23 role?

24 A Yes.

25 Q Okay. Now looking at the

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2 exhibit in front of you, you'll see a
3 number beneath that photograph. All
4 right? www.shutterstock.com-1049487071
5 [sic]?

6 A Mm-hm.

7 Q Is that the Shutterstock asset
8 ID number for that photograph?

9 A Yes.

10 Q And is that the form that these
11 asset ID numbers usually take?

12 A Yes.

13 Q Okay. And you'll see that
14 there's a Shutterstock watermark on the
15 photograph. Do you see that?

16 MS. LACKMAN: Objection. Vague as
17 to -- which photograph are we looking at?
18 BY MR. BURROUGHS:

19 Q The one in front of us is on
20 page -- it looks like 51. It's number 325
21 and it has the asset ID number that I just
22 read.

23 MS. LACKMAN: You mean the one on the
24 left, for the record? For the record.

25 MR. BURROUGHS: Yes. Do you see a

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1 H. SHIMMIN

2 Shutterstock on this page -- do you see a
3 Shutterstock watermark on this page?

4 MS. LACKMAN: Yes. There are two
5 photographs on this page, and you asked
6 about, "The photograph," so for the
7 record, I wanted the record to be clear
8 what photograph of these two we're talking
9 about. I hope that helps.

10 BY MR. BURROUGHS:

11 Q When I ask about the
12 Shutterstock watermark, are you able to
13 see it on this page?

14 A The image on the left has a
15 watermark on it.

16 Q How did that watermark get
17 there?

18 A It's automatically placed after
19 an image is approved.

20 Q And it's placed there by
21 Shutterstock?

22 MS. LACKMAN: Objection --

23 THE WITNESS: -- by the system. The
24 system automatically generates this
25 watermark.

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2 BY MR. BURROUGHS:

3 Q Is anyone other than
4 Shutterstock responsible for adding the
5 watermark?

6 MS. LACKMAN: Objection, vague.
7 Asked and answered.

8 THE WITNESS: No.

9 BY MR. BURROUGHS:

10 Q Okay. Why does Shutterstock add
11 its watermark to the photos?

12 MS. LACKMAN: Objection. Calls for
13 speculation.

14 THE WITNESS: Generally it's so --
15 you can see that the one that hasn't been
16 licensed. We want customers to license
17 images properly. It's also to see where
18 the person, you know, is using this image
19 that doesn't have the license. For
20 example, Getty or iStock also puts their
21 watermark on to know what agency is
22 sourcing their material.

23 BY MR. BURROUGHS:

24 Q Okay. And looking at the size
25 of this photograph with the Shutterstock

1 H. SHIMMIN

2 watermark, is that a thumbnail, a medium
3 size, a large size, or some other size
4 photograph?

5 A I can't say 100 percent, but
6 based on the quality and looking at the
7 screen of a screen of a photo, it's
8 probably a small thumbnail.

9 Q Okay. And do customers pay
10 money to have that Shutterstock watermark
11 removed?

12 MS. LACKMAN: Objection. Vague. Do
13 you mean this photo?

14 THE WITNESS: Clients don't pay to
15 have a watermark removed. They pay to
16 license an image, and when they license
17 it, the watermark is automatically
18 removed.

19 BY MR. BURROUGHS:

20 Q Okay. So other than the five
21 photograph free campaign that we talked
22 about earlier, the only way for a licensee
23 to obtain a watermark-free image from
24 Shutterstock is to make payment to
25 Shutterstock, correct?

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2 A No.

3 Q How else can a customer, aside
4 from the five photograph free programs,
5 obtain the photograph unwatermarked from
6 Shutterstock?

7 A Well, there's third-party
8 malicious websites that you can download
9 any, you know, any image without a license
10 or a watermark that is not associated with
11 Shutterstock. But people can obtain
12 watermark-free content illegally.

13 Q But my question was, from
14 Shutterstock. How can a customer obtain a
15 watermark-free version of Shutterstock
16 photography from Shutterstock without
17 making payment?

18 MS. LACKMAN: Objection -- misstates
19 testimony.

20 THE WITNESS: A full resolution,
21 watermark-free image is only available
22 after a license has been purchased.

23 BY MR. BURROUGHS:

24 Q And what are the names of the
25 third-party sites that you mentioned that

1 H. SHIMMIN

2 Shutterstock is aware is offering these
3 photographs without the watermark?

4 MS. LACKMAN: Objection. Outside the
5 scope. Calls for speculation.

6 THE WITNESS: There are many, but the
7 most common is Nohat.

8 BY MR. BURROUGHS:

9 Q Can you spell that?

10 A N-O-H-A-T.

11 Q Has Shutterstock taken any
12 action to shut Nohat down or stop them
13 from exploiting Shutterstock content?

14 A Yes.

15 Q What has it done?

16 A It sends takedown notices to
17 YouTube or to Facebook or any other social
18 media platform where it advertises. It's
19 done trademark complaints to the various
20 agencies. Reach out to ISPs, hosts,
21 registrars, registrants. Whatever's in
22 its power to get these sort of sites taken
23 down.

24 Q So Shutterstock will send DMC
25 takedown notices, for example, to ensure

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1 H. SHIMMIN

2 these third-party sites remove
3 Shutterstock photography?

4 MS. LACKMAN: Objection, calls for
5 speculation. Vague.

6 THE WITNESS: In this case, a DMC is
7 not applicable, because they're
8 circumventing Shutterstock's mechanisms to
9 get the content. They're not displaying
10 the content per se on the site. So DMC is
11 not applicable.

12 BY MR. BURROUGHS:

13 Q Will it send legal letters and
14 demand letters relating to the content?

15 MS. LACKMAN: Objection. Outside the
16 scope. Go ahead.

17 THE WITNESS: It will send letters
18 regarding their activities. Like I said,
19 they're not displaying the content per se,
20 so it's not applicable.

21 BY MR. BURROUGHS:

22 Q Does Shutterstock use any
23 particular technology to block people from
24 right-clicking and saving a particular
25 photograph?

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2 MS. LACKMAN: Objection. Vague as
3 to, "Photograph."

4 THE WITNESS: I don't know offhand.
5 I haven't tried it. Even if they did, it
6 would have the watermark on it. It can't
7 be saved without a watermark.

8 BY MR. BURROUGHS:

9 Q Okay. Other than contributors,
10 does Shutterstock source photographs from
11 any other platform or source or person?

12 MS. LACKMAN: This is somewhat
13 outside the scope, but you can answer
14 generally.

15 THE WITNESS: Okay. Shutterstock
16 works with agencies. We also count it as
17 contributors, but they're agencies. And
18 we also work with aggregators.

19 BY MR. BURROUGHS:

20 Q What's an aggregator?

21 A So an aggregator is a company
22 that offers their services to
23 contributors, and they will do the legwork
24 of submitting -- so for example, one
25 contributor wants to submit to ten

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2 different stock agencies. An aggregator
3 will do that on their behalf.

4 Q What aggregators does
5 Shutterstock currently work with?

6 MS. LACKMAN: Objection. Misstates
7 the testimony. Foundation for, "Work
8 with."

9 THE WITNESS: We have several. On is
10 called Wirestock.

11 BY MR. BURROUGHS:

12 Q Any others that you can recall?

13 A Not off the top of my head.

14 Q Okay. And is it fair to say
15 that companies like Wirestock operate by
16 signing up a number of photographers and
17 then submitting those photographers'
18 content to multiple sites like
19 Shutterstock?

20 MS. LACKMAN: Objection, outside the
21 scope. Calls for speculation.

22 THE WITNESS: I don't know their
23 business model per se, but they have
24 multiple photographs that have hired them
25 to submit their work on their behalf.

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2 BY MR. BURROUGHS:

3 Q And they submit it to
4 Shutterstock and Shutterstock competitors,
5 right?

6 MS. LACKMAN: Objection. Calls for
7 speculation. Vague.

8 THE WITNESS: I don't know what
9 Wirestock does specifically, but
10 aggregators generally do.

11 BY MR. BURROUGHS:

12 Q Who are Shutterstock's
13 competitors?

14 A The main ones are Getty, iStock,
15 Adobe are the main ones.

16 Q Okay. As a photographer
17 yourself, does Shutterstock compete with
18 you in the licensing of your photographs?

19 MS. LACKMAN: Objection. Calls for
20 expert testimony and speculation.

21 THE WITNESS: No.

22 BY MR. BURROUGHS:

23 Q Do you license your photographs
24 on your own?

25 A No, I do not.

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2 Q So do you only license your
3 photographs through Shutterstock?

4 A No, I submit to other agencies.

5 Q What other agencies do you
6 submit to?

7 A Adobe, iStock, Getty,
8 Dreamstime, 123RF, Alamy. I think that's
9 it.

10 MR. BURROUGHS: Court Reporter, were
11 you able to get all of those?

12 THE REPORTER: No, could she say --

13 THE WITNESS: Sure, sorry. Getty,
14 Adobe, iStock, Dreamstime, Alamy, 123RF.

15 BY MR. BURROUGHS:

16 Q I'm going to give a couple of
17 spellings, and you can correct me if
18 that's wrong. iStock, I think is the
19 letter I, then S-T-O-C-K. And Alamy is
20 A-L-A-M-Y.

21 A Yes. That's correct.

22 Q And 123RF is just the numbers
23 and then the letters R-F. Does
24 Shutterstock have a relationship with
25 123RF?

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2 MS. LACKMAN: Objection. Outside the
3 scope.

4 THE WITNESS: I don't know.

5 BY MR. BURROUGHS:

6 Q And does Shutterstock compete
7 with the other companies that you just
8 identified for me?

9 A I'd say those are amongst
10 competitors in the same space, yes.

11 Q And are you aware personally of
12 photographers licensing their own content
13 directly to customers?

14 A No, I'm not --

15 Q Go ahead.

16 A I'm sorry. No, I'm not.

17 Q So have you ever heard of a
18 photographer licensing a photograph to a
19 client?

20 MS. LACKMAN: Objection, vague as to,
21 "Client."

22 THE WITNESS: Yes.

23 BY MR. BURROUGHS:

24 Q Does Shutterstock itself own any
25 copyrights?

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2 MS. LACKMAN: Objection to the extent
3 it calls for a legal conclusion. Outside
4 the scope. I don't know what topic this
5 relates to. You can answer if you know.

6 THE WITNESS: Yes, they do.

7 BY MR. BURROUGHS:

8 Q Okay. And does it enforce those
9 copyrights?

10 MS. LACKMAN: Same objections.

11 THE WITNESS: Yes.

12 BY MR. BURROUGHS:

13 Q And does it license its own
14 copyrighted content to its customers?

15 MS. LACKMAN: Same objections.

16 THE WITNESS: Yes.

17 BY MR. BURROUGHS:

18 Q So is it fair to say that
19 Shutterstock competes directly with its
20 own contributors?

21 MS. LACKMAN: Objection. Calls for
22 expert testimony. Asked and answered.

23 THE WITNESS: Not necessarily,
24 because it's just one amongst a billion
25 other contributors. So it's such a small

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2 collection, not really. Or you could say
3 every contributor competes against every
4 other contributors. I think that's a
5 different.

6 BY MR. BURROUGHS:

7 Q Do you believe that to be true?

8 MS. LACKMAN: Objection. Outside the
9 scope. Calls for speculation. No
10 foundation.

11 THE WITNESS: Yes.

12 BY MR. BURROUGHS:

13 Q Does Shutterstock mark its own
14 copyrighted photography to differentiate
15 it from the photography supplied by its
16 contributors?

17 MS. LACKMAN: Objection, foundation,
18 confusing.

19 THE WITNESS: No.

20 BY MR. BURROUGHS:

21 Q Okay. So if I go to
22 Shutterstock and I want, you know,
23 nighttime photographs of Joshua Tree, and
24 I search for that, I'll be given a group
25 of photographs that will have both

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2 contributor content and Shutterstock
3 content, assuming, of course, that they
4 have photos of that subject matter?

5 MS. LACKMAN: Objection. Calls for
6 speculation.

7 THE WITNESS: It's possible.

8 BY MR. BURROUGHS:

9 Q Okay. Does Shutterstock take
10 any steps to ensure that a photograph
11 submitted by a contributor doesn't have
12 any copyright issues before displaying it
13 on its platform?

14 MS. LACKMAN: Objection. Vague as
15 to, "Copyright issues." Asked and
16 answered as to, "Some."

17 THE WITNESS: Yes, but it's looking
18 at what's in the image, not the image
19 itself.

20 BY MR. BURROUGHS:

21 Q Okay. So Shutterstock's review
22 will include only what's in the photograph
23 under review, correct?

24 MS. LACKMAN: Objection . Asked and
25 answered. Misstates testimony.

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2 THE WITNESS: Yes. It is not under
3 the purview of the reviewer to determine
4 the copyright ownership of an image.

5 BY MR. BURROUGHS:

6 Q Okay. Do you personally, given
7 your experience at the company, recall a
8 time when Shutterstock ever contacted a
9 contributor to confirm that they had a
10 particular copyright or a right to use a
11 photograph?

12 MS. LACKMAN: Objection. Misstates
13 testimony. Vague as to, "Contact."

14 THE WITNESS: Yes.

15 BY MR. BURROUGHS:

16 Q Okay. And what brought that on?

17 A Generally there was a third-
18 party complaint against an image, and it
19 was a very generic location, it was a very
20 generic image, and so I reached out to the
21 contributor to prove and show other images
22 from the shoot to prove that he was the
23 copyright holder of the content.

24 Q Was that contributor able to do
25 so?

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2 A He was.

3 Q Okay. Was the contributor for
4 the photographs at issue in this case a
5 contributor named -- well, I'm going to
6 withdraw that. Was the contributor for
7 the majority of photographs at issue in
8 this case a contributor named Hane Street?

9 A Yes.

10 Q Okay. Had Shutterstock ever had
11 issues with this contributor aside from
12 those raised by Dr. McGucken?

13 A Yes.

14 Q And what were those issues?

15 A We had a different complaint
16 from a different photographer of copyright
17 infringement.

18 Q Was that before Dr. McGucken's
19 complaint or after?

20 A I don't -- I think -- I don't
21 recall. I'm not going to say I don't
22 remember.

23 Q Did Shutterstock contact Hane
24 Street and confirm whether or not that
25 individual had the rights to the photos

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2 that it was submitting to Shutterstock?

3 A Not that I'm aware of. When we
4 received the second complaint, whether it
5 was McGucken or this other issue, I'm
6 sorry, I don't recall the order, the
7 minute we received the second complaint we
8 terminated his account.

9 Q Okay. Had Hane Street violated
10 its agreement with Shutterstock?

11 MS. LACKMAN: Objection. Calls for
12 speculation.

13 THE WITNESS: The account was
14 terminated because we had received a
15 second complaint about the ownership of
16 his content, and Shutterstock has a very
17 strict policy, so when a copyright
18 complaint is at issue, we terminate the
19 account.

20 BY MR. BURROUGHS:

21 Q And is it a violation of the
22 agreement that Shutterstock has with the
23 contributor for the contributor to submit
24 infringing content?

25 A Yes, it is.

1 H. SHIMMIN

2 Q Okay. Has Shutterstock made any
3 legal claim in any court or tribunal or
4 even informally against Hane Street
5 relating to his or her upload of
6 infringing content to Shutterstock?

7 MS. LACKMAN: Objection. Outside the
8 scope.

9 THE WITNESS: I don't know.

10 BY MR. BURROUGHS:

11 Q Okay. You may have answered
12 this, but are you still in the IP agent
13 role at Shutterstock?

14 A Yes.

15 Q Okay. Other than that Inventory
16 Manager which you referenced, does
17 Shutterstock use any other software or
18 tools to manage the content on its website
19 or its contributors?

20 MS. LACKMAN: Objection, vague.

21 THE WITNESS: Inventory Manager is
22 how we can manage the content. So I guess
23 there's workarounds, but that's the
24 main -- that's the tool that we use.

25 //

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2 BY MR. BURROUGHS:

3 Q Does Shutterstock also use
4 Salesforce?

5 A It does use Salesforce but it
6 does not manage the content on the site.

7 Q Okay. I'm going to put a
8 document in from of you we're going to
9 mark as Exhibit 7. This is the
10 Shutterstock, I believe it's the
11 Shutterstock business model, MGC-3616. I
12 want you to look at it and tell me if you
13 recognize it.

14 (Exhibit 7 was marked for
15 identification.)

16 MS. LACKMAN: Just object to the
17 characterization of the document.

18 BY MR. BURROUGHS:

19 Q Do you recognize this document?

20 MS. LACKMAN: Objection to the
21 characterization of this as a document --
22 call for the production of information
23 relating to how you obtained a document
24 marked with an Itasca Bates stamp.

25 THE WITNESS: I don't recall if I've

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2 seen this before. It doesn't look
3 familiar.

4 BY MR. BURROUGHS:

5 Q Okay. Let's scroll up. Is it
6 accurate that Shutterstock sources high-
7 quality content from contributors and
8 licenses that content to customers
9 worldwide?

10 MS. LACKMAN: Objection, vague.

11 THE WITNESS: Yes, it is.

12 BY MR. BURROUGHS:

13 Q Can we scroll down a little bit?
14 And is it accurate that Shutterstock
15 contributors earn cash when their content
16 is downloaded -- go ahead.

17 A Specifically no, the money goes
18 into an account. When they reach a
19 certain payout threshold that they set,
20 it's delivered to them via PayPal or, you
21 know -- or whatever. So technically no,
22 we are not mailing out money.

23 Q Okay. Is it fair to say
24 contributors are compensated when their
25 content is downloaded?

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2 A Yes.

3 Q Okay. And is it accurate to say
4 that Shutterstock customers license
5 content from Shutterstock with pre-paid
6 plans?

7 A Yes.

8 Q Okay. And is it accurate to say
9 that contributors choose Shutterstock,
10 because Shutterstock has a global audience
11 of paying customers, and efficient process
12 for adding content, and real-time feedback
13 community?

14 MS. LACKMAN: Just maintain the
15 objection as to the time and the nature of
16 this as a quote-unquote, "Document," but
17 you can answer.

18 THE WITNESS: Yes.

19 BY MR. BURROUGHS:

20 Q And is it accurate to say that
21 customers choose Shutterstock, because of
22 its high-quality licensed images, videos,
23 and music, superior search results, and
24 simple, affordable pricing?

25 MS. LACKMAN: Same objection.

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2 THE WITNESS: Yes.

3 BY MR. BURROUGHS:

4 Q I'm going to put another
5 document in front of you, we're going to
6 mark as Exhibit 8. This is MCG-3596 to
7 3597. Now do you recognize the
8 screenshots in this exhibit?

9 (Exhibit 8 was marked for
10 identification.)

11 MS. LACKMAN: Can you be more
12 specific as to, "Screenshot"? I see two.

13 BY MR. BURROUGHS:

14 Q Do you understand which -- and
15 again, she's just saying things for the
16 record. If you understand the question,
17 you can still answer.

18 MS. LACKMAN: I'm saying things to
19 help you get cleaner testimony, so. If
20 you don't want to take me up on them,
21 that's fine, but you can answer if you
22 understand the question.

23 THE WITNESS: I'm just also being
24 courteous and letting my lawyer voice her
25 objections.

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2 BY MR. BURROUGHS:

3 Q I understand.

4 A So, yeah, this is an asset
5 detail page.

6 Q Okay. And is it an asset detail
7 page for a photograph that Shutterstock is
8 offering to the public for licensing?

9 MS. LACKMAN: Objection. Calls for
10 speculation --

11 THE WITNESS: Yes, it is.

12 BY MR. BURROUGHS:

13 Q Okay. And is this the size and
14 resolution that a viewer sees when they
15 see the asset detail page for a photograph
16 on Shutterstock's site?

17 MS. LACKMAN: Objection. Calls for
18 speculation.

19 THE WITNESS: Yes. It could be
20 varying sizes as far as the layout. If it
21 was a panorama, it would be a long, skinny
22 shot, but generally speaking, yes -- I'm
23 sorry?

24 THE REPORTER: What was the last part
25 you said? "As far as the layout --"

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2 THE WITNESS: I'm sorry. Generally
3 speaking, yes.

4 THE REPORTER: Thank you.

5 BY MR. BURROUGHS:

6 Q So it's fair to say that this is
7 one of the sizes that Shutterstock will
8 display to its potential customers?

9 MS. LACKMAN: Objection, vague.
10 Calls for legal interpretation.

11 THE WITNESS: Yes.

12 BY MR. BURROUGHS:

13 Q I see the button there,
14 "Download for free." Is that part of the
15 five free photo program you mentioned
16 earlier?

17 A Yes.

18 Q And I also see in the upper-
19 right corner, "Free trial"? Is that also
20 part of that program?

21 A I believe that's a separate
22 program where you can, you know, upon
23 committing for a year, you can try out one
24 or two weeks -- I don't know the details.
25 The program changes slightly, but the

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2 concept is, you know, you try it out for
3 free, and if you like it, you sign up for
4 a year.

5 Q Okay. Let's look at this second
6 box here, "View an Enlarged Version of the
7 Photograph." Scroll down. So if I was to
8 click on the photograph from the first
9 screenshot, would I be given this enlarged
10 version?

11 MS. LACKMAN: Objection --
12 speculation.

13 THE WITNESS: If you click on the
14 magnifying glass, you'll get this other
15 version of the image.

16 BY MR. BURROUGHS:

17 Q Okay. Let's scroll back up to
18 the top. Which magnifying glass are we
19 talking about?

20 A It's probably in the cloud
21 that's white. I don't think you can see
22 it -- the top-right, there's a little
23 magnifying glass --

24 Q And up top there you see an
25 indication of something called

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2 Shutterstock Flex. What's that?

3 MS. LACKMAN: Objection. Outside the
4 scope.

5 THE WITNESS: So Flex is a new
6 offering where a client can pay a flat fee
7 and be able to download or license music,
8 video, and photos. It's flexible what
9 kind of asset you want to download or
10 license.

11 BY MR. BURROUGHS:

12 Q Does the pricing vary depending
13 on what you're looking to license?

14 MS. LACKMAN: Objection, vague.

15 THE WITNESS: I actually do not know
16 the specifics. But typically, if you
17 wanted music or you wanted a video, you
18 had to have two separate plans. So I need
19 a music plans that gives me whatever, ten
20 downloads a month, and a footage plan that
21 may be ten downloads a month, and you'd
22 have to buy two separate plans. The Flex
23 plan is one price and it doesn't matter
24 the asset you buy. The price point and
25 the minutiae I don't know.

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2 BY MR. BURROUGHS:

3 Q Okay. So then let's scroll
4 down. Let's scroll down one more. So is
5 this one of the free trial packages that
6 you mentioned earlier?

7 MS. LACKMAN: Objection, vague.

8 THE WITNESS: There's always some
9 sort of variation, but yes, this is one
10 of -- an offer that we have.

11 BY MR. BURROUGHS:

12 Q Okay. And then let's scroll to
13 the final box. Does Shutterstock serve
14 this ad on top of its asset detail page
15 when the viewer is clicking away?

16 MS. LACKMAN: Objection. Outside the
17 scope. Vague as to time.

18 THE WITNESS: Not always. It depends
19 on the campaign they're running at the
20 time.

21 BY MR. BURROUGHS:

22 Q Okay. All right. I'm going to
23 put a document in front of you we're going
24 to mark as Exhibit 9. It's MGC 001-887.
25 Have you ever seen this document before?

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2 (Exhibit 9 was marked for
3 identification.)

4 A No, I don't think so.

5 Q Okay. I'm going to have you
6 look at a paragraph that starts, "We also
7 leverage, to the greatest extent
8 possible --"

9 MS. LACKMAN: Objection. No
10 foundation. Never seen the document.
11 Document has not been produced to us as
12 far as I can tell -- oh, maybe it just
13 was.

14 BY MR. BURROUGHS:

15 Q All right. We're going to try
16 to highlight that for you. See that? "We
17 also leveraged, to the greatest extent
18 possible, the global nature of our user
19 interface and marketing efforts, including
20 local languages, currencies, and payment
21 methods, and our effective use of current
22 and emerging technology and marketing
23 channels to attract and retain customers
24 and contributors." Do you see that?

25 A Yes.

1 H. SHIMMIN

2 Q And now is that an accurate
3 statement about Shutterstock's business?

4 MS. LACKMAN: Objection, vague. No
5 foundation. Outside the scope.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q Okay. I'm going to have you
9 look at another paragraph that starts,
10 "Our collection of content." I want you
11 to read that paragraph and tell me if
12 that's an accurate statement about
13 Shutterstock's business.

14 MS. LACKMAN: Same objection as to
15 foundation.

16 THE WITNESS: Okay.

17 BY MR. BURROUGHS:

18 Q Okay. Is that an accurate
19 statement about Shutterstock's business?

20 MS. LACKMAN: Same objection.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q And then can you read the next
24 paragraph, starting with, "The breadth and
25 quality"?

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2 A Okay.

3 Q Is that an accurate statement
4 about Shutterstock's business?

5 MS. LACKMAN: Same set of objections.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q Okay. I'm going to have you
9 look at a paragraph that starts, "For each
10 content submission."

11 MS. LACKMAN: Same objections.

12 BY MR. BURROUGHS:

13 Q Is that also an accurate
14 statement of Shutterstock's business?

15 A Oh, I'm sorry. I was looking
16 for the paragraph that began, "For
17 each --"

18 Q Oh, I'm sorry. I think it might
19 be up on page 7.

20 A So the last one was the breadth
21 and quality.

22 Q Okay -- second paragraph on page
23 8, it looks like.

24 A Second paragraph -- "We
25 evaluate"? That one?

1 H. SHIMMIN

2 Q Yes.

3 A Okay. Okay.

4 Q Is that an accurate statement
5 about Shutterstock's business?

6 A Yes.

7 Q And looking at the paragraph
8 that reads, "We provide valuable tools and
9 insights to our contributors"?

10 A Uh-huh.

11 Q Is that accurate?

12 A Well, let me read it first.

13 Yes.

14 Q Okay. And the paragraph above
15 it, read this line, "Contributors earn
16 royalties based on our published earnings
17 schedule that is based on annual licensing
18 volume which determines the contributor's
19 earnings tier and purchase option under
20 which the content was licensed." Is that
21 accurate?

22 MS. LACKMAN: Same set of objections.

23 Foundation. Outside the scope.

24 THE WITNESS: Yes.

25 //

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Okay. Now let's move down to
4 page 26. There's a paragraph that begins,
5 "We recognize revenue."

6 A Where is it?

7 Q I'm sorry, the paragraph starts
8 with, "Under our license agreements."

9 A Oh, that one. Okay.

10 Q And when you're done, just tell
11 me if that accurately reflects
12 Shutterstock's business.

13 A Yes.

14 Q Okay. And we'll go to page 27.
15 The paragraph, "We recognize revenue
16 gross."

17 MS. LACKMAN: -- sorry. Same
18 objections as before.

19 BY MR. BURROUGHS:

20 Q Apologies -- 46. See the
21 paragraph that starts, "We recognize
22 revenue gross"?

23 A Yes.

24 Q Okay. Please read that
25 paragraph.

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2 MS. LACKMAN: I'll just object on the
3 grounds that she is not an accountant and
4 is not designated to speak to
5 Shutterstock's generally accepted
6 accounting practices. As well as the same
7 objections as before.

8 THE WITNESS: Yes. I am not part of
9 that world and I cannot say. I have no
10 knowledge specific, so I can't say.

11 BY MR. BURROUGHS:

12 Q Okay. Is Shutterstock the
13 principal in the transaction for its
14 licenses and subscription packages?

15 MS. LACKMAN: Same objection. Calls
16 for expert opinion. She's not a CPA.

17 THE WITNESS: I can't say. I don't
18 know.

19 BY MR. BURROUGHS:

20 Q Okay. Does Shutterstock license
21 content to customers through third-party
22 resellers?

23 MS. LACKMAN: Objection. Asked and
24 answered.

25 THE WITNESS: Yes.

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2 BY MR. BURROUGHS:

3 Q Okay. Is anyone else involved
4 in the transaction between Shutterstock
5 and its licensees other than Shutterstock
6 and the licensee?

7 MS. LACKMAN: Objection. Calls for
8 legal conclusion. Same objection on
9 foundation.

10 THE WITNESS: I can't say 100
11 percent, so I will not answer.

12 BY MR. BURROUGHS:

13 Q Can you identify any other party
14 that's ever been involved in that
15 transaction?

16 A No, because it's not --

17 MS. LACKMAN: You can answer -- go
18 ahead. I think you anticipated my
19 objection.

20 THE WITNESS: Yeah, no, I'm not in
21 that world so I can't say.

22 BY MR. BURROUGHS:

23 Q Okay. I'm going to put another
24 document in front of you we're going to
25 mark as Exhibit 10. It's MGC 4910.

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2 (Exhibit 10 was marked for
3 identification.)

4 MS. LACKMAN: I don't remember when
5 went back on the record, but I feel like
6 it's been close to an hour, so would this
7 be an okay time for a break before you --

8 MR. BURROUGHS: Yeah. Just let me
9 finish. I got two questions on this and
10 then we can take a break?

11 MS. LACKMAN: Okay. Perfect. Sounds
12 good.

13 BY MR. BURROUGHS:

14 Q Do you recognize this document?

15 A Not specifically.

16 Q Do you recognize the form of it?

17 MS. LACKMAN: I'm sorry -- I can see
18 the little like thumbnail versions on the
19 left, but the scroll is only, at least for
20 me, showing like the top 60 percent of
21 each page.

22 THE WITNESS: I think -- zoom out a
23 little bit --

24 MS. LACKMAN: Yeah. Even the title
25 is cut off. Go out.

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2 THE WITNESS: What's the title of
3 the -- sorry, Laura, can you click on the
4 title of this one? No, I have not read
5 this.

6 BY MR. BURROUGHS:

7 Q Okay. Let's go to page 7.
8 Okay. And I just want you to read the
9 paragraph starting with, "The breadth and
10 quality of our content offerings."

11 MS. LACKMAN: For the record, I'll
12 note this is page 19 of the .pdf even
13 though there's a 7 at the bottom. Same
14 objection as to foundation. Outside the
15 scope.

16 THE WITNESS: Okay.

17 BY MR. BURROUGHS:

18 Q Okay. Does that paragraph
19 accurately describe Shutterstock's
20 business?

21 A Yeah.

22 Q Okay. Now is Shutterstock aware
23 of anyone ever alleging that it filed
24 anything false in connection with any of
25 its 10-Ks or other SEC filings?

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2 MS. LACKMAN: Objection. Outside the
3 scope. Calls for a legal interpretation.

4 THE WITNESS: I don't know.

5 BY MR. BURROUGHS:

6 Q Okay. Is Shutterstock aware of
7 any errors that it's made in its 10-K or
8 other government filings in the last five
9 years?

10 MS. LACKMAN: Objection. Outside the
11 scope. Calls for a legal opinion. Calls
12 for testimony of outside counsel.

13 THE WITNESS: I have no idea.

14 MR. BURROUGHS: All right. We can
15 take a break. Five minutes okay, or do
16 you need more time?

17 MS. LACKMAN: Five minutes works for
18 me if it works for Heather and Andrew.

19 THE WITNESS: Yes, that's fine.

20 THE REPORTER: All right. We're off
21 the record, 2:22 p.m.

22 (Off the record.)

23 THE REPORTER: Back on the record,
24 2:34 p.m.

25 //

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q You understand you're still
4 under oath?

5 A Yes.

6 Q Okay. What are the different
7 ways that a Shutterstock user can find a
8 particular asset detail page for a
9 photograph?

10 MS. LACKMAN: Objection. Calls for
11 speculation. Outside the scope.

12 THE WITNESS: The most common way is
13 doing a keyword search, looking through
14 the library to find what they're
15 interested in, and then clicking on the
16 image will open up the asset detail page.

17 BY MR. BURROUGHS:

18 Q Okay. And that's the page that
19 we looked at in Exhibit 8?

20 A Yes, with the larger image and
21 about six thumbnails to the right.

22 Q Okay. Can a user find a
23 Shutterstock asset by googling the asset
24 detail number?

25 MS. LACKMAN: Objection to the term,

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2 "Asset detail number." Foundation.

3 THE WITNESS: Sometimes they can --
4 if they google an image ID number, through
5 Google Search, you can click on a
6 thumbnail and it will take you to
7 Shutterstock, yes. That image is still
8 available to be licensed.

9 BY MR. BURROUGHS:

10 Q Does Shutterstock include the
11 image detail number in the URL for the
12 asset detail page?

13 MS. LACKMAN: Same objection to the
14 term.

15 THE WITNESS: Shutterstock includes
16 the image ID number in the URL.

17 BY MR. BURROUGHS:

18 Q Okay. So if I were to search on
19 Google the image ID number, I may get a
20 result showing the page because of the
21 fact that the image ID number lives in the
22 URL, is that right?

23 MS. LACKMAN: Objection. Calls for
24 speculation.

25 THE WITNESS: I'm sorry, say that

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2 again?

3 MS. LACKMAN: It misstates the
4 testimony.

5 BY MR. BURROUGHS:

6 Q If I were to google a
7 Shutterstock image ID number, could I then
8 locate the asset detail page for the
9 photograph with that ID number?

10 MS. LACKMAN: Objection. Misstates
11 testimony. Calls for speculation.

12 THE WITNESS: Not always. It's
13 possible.

14 BY MR. BURROUGHS:

15 Q So does Shutterstock offer
16 curated collections of photograph?

17 MS. LACKMAN: Objection. Vague.

18 THE WITNESS: Shutterstock offers
19 what we would call a collection, and it
20 would be a collection of images that might
21 be applicable for that month. So Autumn's
22 right around the corner, so probably fall
23 foliage and pumpkins and -- so it's a team
24 that specifically looks on the site and
25 finds images that, you know, catchy, eye-

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2 popping, whatever, would put it on
3 Shutterstock's website. So that, in that
4 sense, a collection is created based on a
5 theme usually.

6 BY MR. BURROUGHS:

7 Q Is it fair to say that under the
8 theme that those collections are curated
9 by Shutterstock?

10 MS. LACKMAN: Objection. Vague.
11 Asked and answered.

12 THE WITNESS: It's, I guess, a
13 curated collection of available assets on
14 Shutterstock.

15 BY MR. BURROUGHS:

16 Q Okay. Let's put an exhibit in
17 front of you, Exhibit 11. It's MGC 4741.
18 Is this document familiar to you?

19 (Exhibit 11 was marked for
20 identification.)

21 A No, I have never seen this
22 before.

23 Q Have you had any experience with
24 Shutterstock's Curated Collections?

25 A No, I don't -- I don't dabble

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2 too much in that.

3 Q Okay. Does Shutterstock have
4 expert curators that select photography?

5 MS. LACKMAN: Objection. Calls for
6 speculation. Mischaracterizes the
7 document. Also no foundation. This
8 document was produced to us after 9:30
9 last night before a deposition.

10 THE WITNESS: Shutterstock has people
11 who are -- put together collections. They
12 have various expertise, and that's part of
13 their job.

14 BY MR. BURROUGHS:

15 Q Okay. So is it fair to say that
16 Shutterstock has a curation team?

17 MS. LACKMAN: Objection. Calls for
18 speculation. Vague.

19 THE WITNESS: I'm not sure if it
20 would particularly be a team. I'm not
21 sure how that is structured. There are
22 people who specifically put collections
23 together. Whether that's part of their
24 only role or part of their role I'm not
25 sure.

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2 BY MR. BURROUGHS:

3 Q Okay. In the third paragraph
4 here it says, "Our curation team will kick
5 into action."

6 A Okay. Then I guess we do.

7 MS. LACKMAN: Objection. Calls for
8 speculation -- outside the scope. No
9 foundation that any of Dr. McGucken's
10 images were curated.

11 BY MR. BURROUGHS:

12 Q So is it fair to say that
13 Shutterstock has a curation team that
14 curates the photography it offers to its
15 licensees?

16 MS. LACKMAN: Same objection. Calls
17 for speculation. Asked and answered.
18 Misstates the document.

19 THE WITNESS: According to the
20 document, yes.

21 BY MR. BURROUGHS:

22 Q Have you ever worked with any of
23 Shutterstock's curators in your time at
24 Shutterstock? Personally?

25 A Not officially.

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2 Q In what capacity have you worked
3 with them?

4 A I was trying to -- on a personal
5 project. It wasn't for work.

6 Q Okay. Do you believe personally
7 that Shutterstock's curation team curates
8 an appealing body of photography for
9 display on its site?

10 MS. LACKMAN: Objection. Calls for
11 speculation.

12 THE WITNESS: I'm more interested in
13 how they do it. So I don't particularly
14 have an answer one way or the other.

15 BY MR. BURROUGHS:

16 Q So you don't have an opinion as
17 to the quality of the photography offered
18 on Shutterstock's site, personally?

19 MS. LACKMAN: Objection. Confusing.
20 Outside the scope. Misstates testimony.

21 THE WITNESS: I understand your
22 question to ask the Curated Collections,
23 not the library.

24 BY MR. BURROUGHS:

25 Q In regard to the library, do you

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2 feel that that material is well-curated?

3 MS. LACKMAN: Personally? Also
4 objection -- no foundation. Misstates the
5 testimony.

6 BY MR. BURROUGHS:

7 Q Go ahead.

8 A There's some amazing stuff on
9 the site. But in fairness, the work isn't
10 curated that gets onto the site.
11 Contributors just submit the content and
12 then specific collections are created
13 based on those submissions.

14 Q And what's your definition of,
15 "Curate"?

16 MS. LACKMAN: Objection. Outside the
17 scope of the 30(b)(6) deposition. If you
18 have a personal view, you could answer.
19 It's vague.

20 THE WITNESS: So as a personal view,
21 curation is something that goes and looks
22 and many things across many different
23 platforms and will put together a curated
24 user exhibition. It's specifically
25 selected to be part of that exhibit. So

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2 Shutterstock's library is not curated in
3 that sense.

4 BY MR. BURROUGHS:

5 Q Do you believe it to be curated
6 in any sense?

7 A No, I don't.

8 Q I'm going to put a document in
9 front of you that we're going to mark as
10 Exhibit 13 [sic]. It's STK 5 to 8.

11 (Exhibit 12 was marked for
12 identification.)

13 THE REPORTER: 12. Do you know it
14 was 12?

15 MR. BURROUGHS: I'm sorry. 12 was
16 that last document -- oh, I'm sorry, you
17 know what? This is 12. We'll mark STK 5
18 to 8 as 12, unless Ms. Zaharia corrects
19 me.

20 BY MR. BURROUGHS:

21 Q Have you seen this document
22 before?

23 A Yes, I have.

24 Q What is this document, and where
25 have you seen it?

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2 A My understanding is this is the
3 first document that we received that one
4 of these images had a problem. The
5 copyright was an issue.

6 Q And did you personally respond
7 to this?

8 A I do not believe that I did.

9 Q Okay. Who at Shutterstock
10 responded to this notice?

11 A I would have to see the response
12 to tell you who it was.

13 Q Okay. I'm going to put Exhibit
14 13 in front of you. STK 1 to 4. We can
15 scroll through this document for you.
16 Does this indicate to you who responded to
17 the DMCA notice in Exhibit 12?

18 (Exhibit 13 was marked for
19 identification.)

20 A Yes. It was my colleague.

21 Q Who's that?

22 A Archer Zambrowski.

23 Q Okay. Was Archer using the fake
24 name or alias Chad when he was dealing
25 with artists submitting DMCA notices or

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2 lawyers?

3 MS. LACKMAN: Compound. Object to
4 the term, "Fake name." No foundation.

5 THE WITNESS: We all use a pseudonym
6 when dealing with cases that come through.

7 BY MR. BURROUGHS:

8 Q Were you yourself using a
9 pseudonym?

10 MS. LACKMAN: Objection. When?
11 Vague.

12 BY MR. BURROUGHS:

13 Q At any time?

14 A Only when on the legal team, but
15 yes.

16 Q What was your pseudonym?

17 A Well, if I told you, it wouldn't
18 be a pseudonym any more, would it?

19 (Non-confidential portion of
20 transcript ends.)

21 //

22 //

23 //

24 //

25 //

CONFIDENTIAL

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2 (Confidential portion of
3 transcript begins.)

4 BY MR. BURROUGHS:

5 Q Don't worry. We'll mark this
6 confidential. What was your pseudonym?

7 MS. LACKMAN: Let's go ahead and do
8 that. Let's mark it confidential.

9 THE WITNESS: Lynne.

10 BY MR. BURROUGHS:

11 Q How do you spell it?

12 A L-Y-N-N-E.

13 (Confidential portion of
14 transcript ends.)

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

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2 (Non-confidential portion of
3 transcript begins.)

4 BY MR. BURROUGH:

5 Q Did you pick that name, or did
6 someone at Shutterstock pick it for you?

7 A I chose it.

8 Q Okay. And why did you use the
9 pseudonym?

10 A We all do. We want to protect
11 our identities. There are angry people in
12 the world, and there's also -- we just
13 don't want our personal contact or our
14 names out there to be contacted, either
15 through LinkedIn or through social media.
16 It's just to protect our personal lives.

17 Q Does Exhibit 13 reflect
18 Shutterstock's response to the cease and
19 desist in Exhibit 12?

20 A I can't definitively say because
21 I don't know what it's replying to.

22 Q Okay. Do you know if
23 Shutterstock at the time it sent the
24 message in Exhibit 13 had removed any
25 images identified in the cease and desist

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2 letter that it's Exhibit 12?

3 MS. LACKMAN: Objection. Vague.

4 THE WITNESS: So when a response like
5 this is sent, it confirms that we removed
6 the content that was listed in the
7 complaint, the URL that was listed in the
8 complaint.

9 BY MR. BURROUGHS:

10 Q Okay. So when Shutterstock
11 receives a notice like the notice we
12 looked at in Exhibit 12, what are the
13 options it has available to it in regard
14 to addressing the disputed content?

15 MS. LACKMAN: Objection. Vague.

16 THE WITNESS: So if the notice or
17 the, let's just say the letter, if we
18 receive a letter that a rights holder is
19 alleging that content on Shutterstock's
20 site is infringing, if we have a link to
21 the original and there's a link, or at
22 least an ID number, that we can look at
23 and compare and verify that, yeah, it
24 looks like the exact same image, we'll
25 remove it.

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2 If we can't identify or if it's
3 missing something vital like an ID number
4 or an original where we can't confirm or
5 we can't see to verify, we'll ask the
6 rights holder for more information. But
7 as long as we can reasonably identify the
8 original and the infringing, even if it's
9 not a proper DMC notice, we will remove
10 the content so it won't be licensed on the
11 site.

12 BY MR. BURROUGHS:

13 Q So when you say, "Remove the
14 content," what does that mean exactly?

15 A So when we remove the content,
16 we are removing it from the Shutterstock
17 website, and it is no longer available to
18 be licensed. When we say, "Removed,"
19 that's what we mean.

20 BY MR. BURROUGHS:

21 Q And do you keep copies of it up
22 at other Shutterstock URLs?

23 MS. LACKMAN: Objection. Foundation
24 as to, "Keep." Vague.

25 THE WITNESS: There's -- the

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2 thumbnail lives in other places for
3 internal purposes. It's very important
4 that we are able to still see what the
5 asset ID is. But it is not available for
6 license.

7 BY MR. BURROUGHS:

8 Q Is it available for display to
9 the public? Can the public still see it?

10 MS. LACKMAN: Objection. Calls for
11 speculation.

12 THE WITNESS: Sometimes it really is
13 a cache issue. We don't have control over
14 how often an individual empties the cache
15 in their browser history or their cookies.
16 So even if an image were removed, if they
17 had seen it five minutes before, it still
18 might pop up on their -- an ad or
19 something, for example.

20 BY MR. BURROUGHS:

21 Q What if someone in the public
22 can see it three months thereafter?

23 MS. LACKMAN: Objection. Calls for
24 speculation. No foundation.

25 THE WITNESS: Depending where they

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2 see it, it still can't be licensed.

3 BY MR. BURROUGHS:

4 Q But it's fair to say that even
5 after Shutterstock quote-unquote,
6 "Removes," a photograph, that photograph
7 is still available for viewing by the
8 public at at least one other URL, correct?

9 MS. LACKMAN: Objection. Misstates
10 the testimony. Please, Scott, ask the
11 questions. Don't testify.

12 BY MR. BURROUGHS:

13 Q Go ahead.

14 A There's so many possibilities of
15 where an image can appear, and it's beyond
16 Shutterstock's control. The images --
17 when we say, "Remove," we are removing the
18 image from being able to be licensed on
19 the Shutterstock website. The other
20 instances in the ethosphere are things
21 beyond Shutterstock's control. It appears
22 on TinEye, that's TinEye's -- a separate
23 company from Shutterstock. We have no
24 control. If it's in Google Image Search,
25 that's a separate entity than

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2 Shutterstock. So I can't answer your
3 question other than saying we remove it
4 from being able to be licensed.

5 BY MR. BURROUGHS:

6 Q What if it's on a
7 shutterstock.com URL and available for
8 viewing by the public?

9 MS. LACKMAN: Objection. Calls for
10 speculation. No foundation that anything
11 is viewable by the public.

12 THE WITNESS: Can you give me an
13 example of what you mean?

14 BY MR. BURROUGHS:

15 Q Sure. Yeah. I think we'll get
16 to some of those. Do you understand the
17 question?

18 A I do, but there's so many
19 variables to your question. I need
20 something specific that I can speak to.

21 Q Okay. Let me ask it this way.
22 Once Shutterstock removes, as you use the
23 word, or as Chad uses the word here in
24 this exhibit, a photograph from being
25 available for license, is that photograph

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2 still available for viewing by the public
3 if they have a shutterstock.com URL?

4 MS. LACKMAN: Objection. Calls for
5 speculation. Are you talking about the
6 photograph in that one -- I mean, the
7 photograph in the letter? The URLs
8 identified in the letter? Are we talking
9 about other photographs? I'm just very
10 confused, because we're talking about a
11 lot of potential images -- please clarify
12 your question and we might be able to move
13 forward.

14 BY MR. BURROUGHS:

15 Q Go ahead.

16 A Again, I'd like to see a
17 specific example so I can accurately
18 answer what you'd like to have answered.

19 Q Are you aware of that ever
20 happening?

21 A Define, "That."

22 Q Shutterstock claiming to have
23 removed a particular image but that image
24 still being available for viewing by the
25 public on a shutterstock.com URL?

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2 MS. LACKMAN: Objection. Vague. No
3 foundation. Calls for speculation.

4 THE WITNESS: It has happened. Most
5 commonly, a rights holder might give us a
6 list of, say ten images, and just by human
7 error, we missed one. Not on purpose.
8 You know. We may have said that we
9 removed it and we missed an image by
10 accident. So the rights holder will write
11 in and say, "I still see it." It's
12 happened to me a couple times, and I'll
13 remove it promptly and apologize for
14 missing the image. It's certainly not
15 intentional.

16 BY MR. BURROUGHS:

17 Q So is it fair to say that when
18 Chad is claiming that Shutterstock removed
19 the image, what he's actually saying is
20 that he didn't remove the image from the
21 website but he removed it from the
22 licensing page for the image?

23 MS. LACKMAN: Objection. Vague. No
24 foundation. Mischaracterizes this
25 document and the prior document.

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2 THE WITNESS: No, we don't have
3 something called a licensing page that I'm
4 aware of. It's just unable to be
5 licensed.

6 BY MR. BURROUGHS:

7 Q And how is that done?

8 A Through Inventory Manager.

9 Q So someone at Shutterstock will
10 go into Inventory Manager and do what?

11 A Put in the asset ID and the
12 asset type into a search field. The asset
13 appears, and we have the ability to
14 suspend the image.

15 Q Okay. And suspending the image
16 doesn't delete the image from
17 Shutterstock's system, correct?

18 MS. LACKMAN: Objection. Vague.

19 THE WITNESS: No, it's different than
20 delete. It's suspend.

21 BY MR. BURROUGHS:

22 Q All right. And suspending the
23 image in Inventory Manager doesn't remove
24 it from all of Shutterstock's URLs,
25 correct?

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2 MS. LACKMAN: Objection. Vague. No
3 foundation. Mischaracterizes the prior
4 document. Mischaracterizes the testimony.

5 THE WITNESS: It removes it from the
6 ability of being licensed. It does not
7 remove every instance in existence of the
8 image.

9 BY MR. BURROUGHS:

10 Q And that includes images that
11 are on publicly-available shutterstock.com
12 URLs, correct?

13 MS. LACKMAN: Objection. Asked and
14 answered. No foundation. Misrepresents
15 the term, "Images." I don't know what
16 else. You can answer if you understand.

17 BY MR. BURROUGHS:

18 Q Go ahead.

19 A I'm not an engineer, so I
20 don't -- I can't tell you exactly which
21 pages, which URLs are still existing.
22 My -- our job is to make sure that this
23 content can no longer be licensed, and
24 that's what we do.

25 Q Okay. Do you do anything else?

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2 Do you know the difference between --

3 THE REPORTER: What was the answer?

4 I didn't catch that.

5 MR. BURROUGHS: I thought she said
6 no.

7 THE WITNESS: I didn't say
8 anything --

9 BY MR. BURROUGHS:

10 Q Do you do anything else --

11 A That's what I thought you said.
12 No, I don't.

13 Q Just to be clear, do you do
14 anything else?

15 A Do I do anything else? Can you
16 be a little more specific?

17 Q Well, you told me that in
18 response to the notice, Shutterstock makes
19 sure that it stops licensing the
20 photograph. I'm asking if you do anything
21 else in response to the notice?

22 A We write back to the complainant
23 with some sort of response. Either this
24 one or a proper DMC complaint, we have
25 removed the content from being able to be

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2 licensed.

3 Q Anything else?

4 A At this point in time, no.

5 MS. LACKMAN: Objection. Calls for
6 speculation. Vague.

7 BY MR. BURROUGHS:

8 Q What is the difference between
9 suspending an asset and deleting an asset
10 in Inventory Manager?

11 A Suspending is it's -- could be
12 unsuspended and put back on the site,
13 whereas deleted it can't. In the crudest
14 of terms.

15 Q And will deleting an asset
16 remove it from the system?

17 MS. LACKMAN: Objection. Calls for
18 speculation. Vague.

19 THE WITNESS: We don't, in Inventory
20 Manager, cannot delete an image. The
21 contributor can --

22 BY MR. BURROUGHS:

23 Q Why is that?

24 A We don't have their permission.

25 A contributor can delete an image from

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2 their portfolio, or if we on
3 Shutterstock's side, we have to make a
4 request, like I mentioned earlier. It has
5 to go through our engineers.

6 Q So if Shutterstock wants to
7 delete an asset from its system, it has to
8 issue a ticket to an engineer to
9 specifically address that asset, correct?

10 MS. LACKMAN: Objection. Misstates
11 testimony.

12 THE WITNESS: If it has specific
13 locations where it wants the image
14 removed, then it needs to be requested
15 from an engineer.

16 BY MR. BURROUGHS:

17 Q And to be clear, there's no
18 other way that Shutterstock can that asset
19 from the system, correct --

20 A Possibly --

21 MS. LACKMAN: -- calls for
22 speculation.

23 THE WITNESS: I don't know.

24 BY MR. BURROUGHS:

25 Q Are you aware of any instances

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2 when images from a contributor who was
3 terminated still appeared on
4 Shutterstock's asset detail pages?

5 MS. LACKMAN: Objection. Calls for
6 speculation. Outside the scope. Vague.

7 THE WITNESS: Yes.

8 BY MR. BURROUGHS:

9 Q And can you elaborate on those
10 instances?

11 A Yeah. One -- sometimes it's not
12 immediately removed for the same reason
13 that after an image is submitted and
14 approved, it's not immediately available
15 on the site. There's a possible lag time
16 that will vary. So it might take 24 hours
17 for the content to be removed. It's not
18 always the case, but sometimes. And we
19 did have a bug where sometimes an asset
20 could be viewed with an exact URL that we
21 had removed, or the contributor had been
22 terminated.

23 Q Can you describe for me this
24 bug?

25 MS. LACKMAN: Calls for speculation.

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2 Outside the scope. No foundation. Vague
3 as to time.

4 THE WITNESS: The bug was with an
5 exact URL. It could be viewed. It could
6 not be licensed.

7 BY MR. BURROUGHS:

8 Q So is it fair to say that a
9 viewer with a Shutterstock URL for the
10 image could view that image publicly?

11 MS. LACKMAN: Objection. Calls for
12 legal conclusion. Calls for speculation.
13 No foundation. Irrelevant. Well, it's
14 not irrelevant, but it's outside the scope
15 of this case. You can answer if you know.

16 THE WITNESS: Yeah. It's just, they
17 have to have the exact URL. And it was,
18 the customer would save that URL, which is
19 where, just by searching by the ID number
20 you would not be able to see it.

21 BY MR. BURROUGHS:

22 Q Okay. Does Shutterstock
23 terminate contributors from time to time?

24 A Yes.

25 Q Why?

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2 A There are several reasons.
3 Fraud. We have any sort of reason to
4 believe that they are not the copyright
5 owners of the content, we will terminate
6 them. If a contributor has more than one
7 account. Contributors are only allowed to
8 have one account, unless one's a personal
9 and one's a business, which is different.
10 So one account will be closed and they can
11 keep one open. Image sharing is another
12 reason why we would terminate probably
13 both of the accounts.

14 A contributor asks to be
15 terminated or -- not terminated, but their
16 account closed, so upon request we'll shut
17 down the account. Those are the main
18 reasons. In rare cases, if the
19 contributor continues to submit spammy
20 content or if we reach out to them and,
21 for example, warn them that they're
22 repeatedly submitting content that's been
23 rejected, that sort of thing.

24 Q Okay. So is one of the reasons
25 why you terminate contributors because

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2 they submitted photos for which they don't
3 have the copyrights?

4 MS. LACKMAN: Objection. Calls for
5 speculation.

6 THE WITNESS: Yes. That's one of the
7 reasons why they would be terminated.

8 BY MR. BURROUGHS:

9 Q Okay. How many photographs does
10 a contributor have to upload that are
11 found to be infringing before they're
12 terminated?

13 MS. LACKMAN: Objection. Calls for
14 speculation. Vague -- sorry. Outside the
15 scope.

16 THE WITNESS: Let me answer it a
17 different way, because it doesn't
18 necessarily mean how many they upload.
19 It's how many are approved. It's how many
20 are on the site. How many DCMA notices.
21 So when we receive a DMCA notice, the
22 account is investigated. If we get even
23 one complaint from, let's say a Good
24 Samaritan, "Hey, I think this contributor
25 doesn't own this content," we investigate

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2 it, and if we have enough evidence, for
3 example, that it's from a non-DMCA
4 perspective, if we have enough evidence
5 we'll terminate the account immediately.

6 BY MR. BURROUGHS:

7 Q So you may terminate a
8 contributor account even if they've
9 uploaded one photograph that's infringing?

10 A Yes.

11 Q Okay. It sounds like there's no
12 set policy in regard to a particular
13 number of infringing photos that have to
14 be uploaded before someone's terminated,
15 right?

16 MS. LACKMAN: Objection. Outside the
17 scope. Misstates testimony.

18 THE WITNESS: Well, uploading it
19 isn't necessarily the issue. It's -- the
20 number of DMCA complaints or the number of
21 images that have received a complaint,
22 rather, and we have a strict three or more
23 and you're out. I run a report every
24 Monday. You have three or more, I
25 investigate the account and I terminate

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2 the account -- the review process, if they
3 receive a previously submitted content
4 rejection, Archer runs that report every
5 Monday, and if they have three or more and
6 we're convinced that it's an issue, we
7 terminate the account.

8 BY MR. BURROUGHS:

9 Q When you say three or more,
10 three or more what?

11 A Three or more images.

12 Q So if one contributor uploads
13 three images that are found to be
14 infringing, then they're terminated under
15 your policy?

16 MS. LACKMAN: Objection to the extent
17 it calls for speculation.

18 THE WITNESS: I think you're being
19 hung up on the word, "Upload." The number
20 of uploads is irrelevant. It's either how
21 many rejection reasons they have that's
22 previously submitted, or the number of
23 images that have received complaints. The
24 uploads are pretty much irrelevant to --
25 they could have one image or 500 in their

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2 account. It's either the complaints or
3 the rejection reasons, if that makes
4 sense.

5 BY MR. BURROUGHS:

6 Q So if Shutterstock has learned
7 that a contributor has uploaded and
8 Shutterstock has approved three images
9 that are infringing, then that contributor
10 will be terminated?

11 MS. LACKMAN: Objection. Calls for
12 speculation as to, "Determined are
13 infringing."

14 THE WITNESS: If we received a DMC
15 notice and a contributor only had three
16 images, and all three of those images were
17 listed in the complaint, then yes, we
18 would terminate that contributor.

19 BY MR. BURROUGHS:

20 Q What if that contributor had 500
21 images and three of them are infringing?

22 A We would still terminate the
23 contributor. The volume of the portfolio
24 doesn't matter. We are very strict about
25 our policy, so if you have one image or

1 H. SHIMMIN

2 ten or 500, it doesn't matter.

3 Q Okay. And what is the policy
4 for the timeline in which the contributor
5 who's contributed for licensure three or
6 more images that are infringing?

7 MS. LACKMAN: Object to the term,
8 "Licensure." No foundation that
9 Shutterstock engages in licensure. Calls
10 for speculation.

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A So within the lifetime of that
14 contributor's account. So if he's been
15 there for ten years and I received -- the
16 third image has a complaint against it
17 today, he'll be terminated. Doesn't
18 matter how long he's been a contributor.

19 Q Okay. Then will he be
20 terminated in 24 hours, in six months, is
21 there a time policy?

22 MS. LACKMAN: Objection. Vague.

23 THE WITNESS: Like I said, if we
24 learn that there's three images within the
25 lifetime of that contributor, he's

1 H. SHIMMIN

2 terminated.

3 BY MR. BURROUGHS:

4 Q Is that immediately?

5 A Like I said before, we run the
6 report every Monday, and then -- or if I
7 get a complaint. Let's say there's ten
8 images from the same contributor, I'll
9 just terminate him on the spot. I won't
10 wait until Monday, for example.

11 Q Sometimes it's immediately, but
12 in no case is it longer than a week,
13 right?

14 MS. LACKMAN: Objection. Calls for
15 speculation.

16 THE WITNESS: Yes.

17 BY MR. BURROUGHS:

18 Q Okay. I'm going to put a
19 document in front of you that we're going
20 to mark as Exhibit 14, STK 5329 is the
21 Bates number. Do you recognize this
22 document?

23 (Exhibit 14 was marked for
24 identification.)

25 A Yes.

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2 Q Okay. What is this document and
3 how do you recognize it?

4 A So this is the contributor admin
5 page, as it were. This is a contributor
6 detail page. And this is what we see
7 within our system for a contributor.

8 Q Okay. Do you know which
9 contributor this page is for?

10 A Yes. It's for Hane Street.

11 Q And is the username for Hane
12 Street Moajjem Hossain?

13 MS. LACKMAN: Objection to the
14 pronunciation of the name, but you can
15 answer.

16 THE WITNESS: Yes.

17 BY MR. BURROUGHS:

18 Q Okay. How would you pronounce
19 the name?

20 A Oh, I speak Portuguese. I don't
21 speak Bangladeshi. Moajjem Hossain. I
22 don't know how to pronounce it.

23 Q Is it your understanding that
24 this individual was based in Bangladesh
25 when he was working with Shutterstock?

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2 MS. LACKMAN: Objection to the term,
3 "Working with." No foundation.

4 THE WITNESS: Right. So he's not
5 working with Shutterstock. He signed up
6 to be a contributor, and he put his
7 location as Bangladesh.

8 BY MR. BURROUGHS:

9 Q And he was contributing
10 photographs to Shutterstock, Shutterstock
11 was reviewing them, and then Shutterstock
12 was offering them for license on its site?
13 Is that correct?

14 A Yes.

15 Q Okay. And this individual was
16 approved to be a contributor by
17 Shutterstock. Is that correct?

18 A Yes.

19 MS. LACKMAN: Objection. Calls for
20 speculation.

21 BY MR. BURROUGHS:

22 Q And Shutterstock made payments
23 to this individual of over \$1,000?

24 A Yes.

25 Q Okay. Now you'll see up here,

1 H. SHIMMIN

2 "Papertrail notes," and then, "Papertrail
3 in Iris." See that?

4 A Yes.

5 Q What's Iris?

6 A So Iris is the -- a system that
7 we're migrating to where we can access
8 information on customers and contributors.
9 So contributors are being migrated last,
10 in bits. So if you wanted to see the
11 Papertrail notes, we'd have to go to iris.

12 Q Okay, and if I were to click on
13 this, what would be displayed on the page?

14 A It would be -- Papertrail would
15 be login, logout, change password, sort of
16 a log of access to the account --

17 Q Access by the contributor?

18 A Or if one of us at Shutterstock
19 impersonated the contributor, that would
20 show up.

21 Q And that would happen from time
22 to time?

23 A Not very often, but sometimes we
24 need to impersonate a contributor.

25 Q Okay. And why would that be?

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2 A It's more common when I worked
3 in the content department, but sometimes a
4 computer was having issues uploading
5 content or not seeing earnings or not
6 seeing something, and we would log in to
7 see if we can replicate the same
8 experience to try and figure out what was
9 wrong.

10 Q Okay. I see in the account
11 notes an indication that there was some
12 suspicious activity on the account in
13 2020?

14 A Yes.

15 Q Okay. Do you know what that
16 suspicious activity was?

17 A No. That's just a generic
18 message that the system would
19 automatically be set to pick out certain
20 things, which I don't know what those
21 items are. So it would generate this
22 note.

23 Q Okay. And it looks like on
24 2/11/21, you disabled this contributor's
25 access, right?

1 H. SHIMMIN

2 A I didn't, but it was disabled,
3 yes.

4 Q Okay. And do you know who
5 spatel is?

6 A Yes. It's Sejal Patel.

7 Q Okay. And who's that?

8 A She is my former boss.

9 Q Okay. Do you know the title?

10 A Yeah. She was associate counsel
11 IP in litigation.

12 Q Do you know where she works now?

13 A I don't know the name of the
14 firm, sadly. Now I feel bad. I don't
15 remember the name of where she works.

16 Q Does this indicate that Ms.
17 Patel suspended all photos and footage
18 from this contributor on February 11,
19 2021?

20 A Yes.

21 Q Okay. Now is that the first
22 action that was taken by Shutterstock in
23 connection with this contributor's content
24 in terms of limiting access to it?

25 MS. LACKMAN: Objection, vague.

1 H. SHIMMIN

2 THE WITNESS: As far as within the
3 account? Yes.

4 BY MR. BURROUGHS:

5 Q Any other way?

6 A Well, if it were a specific
7 image, it would not be visible --

8 Q Okay. Go down to the second
9 page. What do these buttons do?

10 A So the, "Warn (send to user),"
11 is, you can send a message through the
12 system, directly to the contributor, and
13 it's a warning. You can write whatever
14 text you like. There's the, "Note
15 (internal only," and that means if we
16 wanted to add a specific note regarding
17 the account, that's how we would do it
18 internally.

19 What does that say? "Add" --
20 sorry, I don't use all of these. "Add
21 Document," we've never ever used. I mean,
22 I've never ever used. I don't know what
23 that would be. "Mark as Active," we would
24 never use. "Reset Password," we don't
25 ever do. "Clear Vanity Alias," we never

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2 touch. So my team doesn't touch the rest
3 of those, so I can't speak specifically.

4 Q Understood. To your
5 understanding, was the termination of this
6 account in compliance with Shutterstock's
7 policies?

8 MS. LACKMAN: Objection. Confusing.

9 THE WITNESS: Yes.

10 BY MR. BURROUGHS:

11 Q Okay. Let's pull this down and
12 we'll look at Exhibit 15, which is going
13 to be STK 5332 to 5334. Are you familiar
14 with this document?

15 (Exhibit 15 was marked for
16 identification.)

17 A Yes.

18 Q What's this document and how are
19 you familiar with it?

20 A So this is a ticket that we can
21 submit. This is what the team would see
22 as far as a request. So in this case,
23 here's a list of image IDs that we are
24 requesting the thumbnails be removed.

25 Q Okay. Now do the image IDs on

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1 H. SHIMMIN

2 this document reflect all photographs at
3 issue on this case?

4 A I don't --

5 MS. LACKMAN: Objection. Calls for
6 speculation.

7 THE WITNESS: I don't know. I didn't
8 create the tickets. I don't know. I
9 can't say.

10 BY MR. BURROUGHS:

11 Q Okay. Do you know if there are
12 any other tickets like this that were
13 created in connection with the removal of
14 the photographs at issue in this case?

15 A I did not create any, so I can't
16 say definitively.

17 Q Do you have any understanding as
18 to how or when the photographs at issue in
19 this case were removed from Shutterstock's
20 system?

21 A I don't know the exact day.
22 Since I didn't create the ticket, I
23 didn't.

24 Q Do you know anything about that
25 process, or were you not involved and you

1 H. SHIMMIN

2 don't have any understanding?

3 A Yeah, I wasn't involved in this
4 process.

5 Q And you don't have any other
6 understanding?

7 A Just the high level that we've
8 already discussed.

9 Q Okay. I'm going to put a
10 document in front of you we're going to
11 mark as Exhibit 16. This is STK 5336.
12 Are you familiar with this document?

13 (Exhibit 16 was marked for
14 identification.)

15 A Yes.

16 Q What's this document and how are
17 you familiar with it?

18 A So like the previous we saw with
19 Hane Street, this is the account details
20 for Muhammad Raza. So I'm familiar
21 because I terminated this contributor.

22 Q And why did you terminate this
23 contributor?

24 A So if you look at -- so 4/18, he
25 doesn't own the copyright to these images.

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2 So in this case we received, like a Good
3 Samaritan noted and said, "Hey, I think
4 this contributor doesn't own this
5 content," so I investigated and I found
6 sufficient proof from my end that I felt
7 comfortable terminating the contributor.

8 Q Okay. Of the 208 -- well, let
9 me ask you. Had Shutterstock previously
10 approved 208 of this contributor's
11 photographs for display on its site?

12 A Yes.

13 Q Okay. Scroll down a little bit
14 lower. I see a reference to Flickr in --
15 actually in two of the three boxes.
16 What's that reference regarding?

17 A So whenever we've terminated a
18 contributor, we want to put information in
19 the notes so if we have to go back we can
20 look at it. So in this example, and I
21 don't recall if it were a Good Samaritan
22 who provided this information or if I
23 found it. I don't recall. But a copy of
24 the image was found on Flickr. So we put
25 this in the notes to compare it with the

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2 three asset ID numbers that preceded, just
3 so we could, in the future if we needed to
4 reference it, here's an image ID and we
5 can find it on Flickr, in this instance.

6 Q Okay. And do you understand
7 that that Flickr account belongs to the
8 plaintiff in this case, Dr. Elliot
9 McGucken?

10 MS. LACKMAN: Objection. Calls for
11 speculation and foundation.

12 THE WITNESS: I do now. I don't
13 believe I did at the time. I just saw
14 that the name didn't match the
15 contributor.

16 BY MR. BURROUGHS:

17 Q Did you go to that Flickr site
18 on April 18, 2022?

19 A I accessed the first Flickr
20 image, yes. The other two were a
21 different site, like a wallpaper site, it
22 looks like.

23 Q And was this the first time
24 you'd taken any action in regard to the
25 photos this individual had uploaded?

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2 A I can't say definitively,
3 because I haven't seen the whole history
4 of his accounts, but looking at the notes
5 where it says zero photos suspended, this
6 is probably the first complaint we had
7 against this contributor.

8 Q Okay. And where was this
9 contributor located?

10 A It looks like he put Pakistan.

11 Q Okay. Does Shutterstock take
12 any steps to confirm any of this
13 information in the left column having to
14 do with addresses and so forth?

15 MS. LACKMAN: Objection, asked and
16 answered.

17 THE WITNESS: Oh, when a contributor
18 signs up, whatever email they provide,
19 they're required to verify the email.
20 They also have to fill out tax forms and
21 the information they put on the tax form
22 has to match the information that they've
23 put in the account, like their address, et
24 cetera, has to match, before they can get
25 paid.

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2 BY MR. BURROUGHS:

3 Q What is this indication at the
4 bottom, "Changed uploading_ok from 1 to
5 0"?

6 A Well, that's changed the ability
7 to upload yes or no. If you scroll down a
8 little bit lower, you'll see a little
9 radial button, "Uploading Allowed?
10 Yes/No." So that's the code that the
11 system spits out when that's changed.

12 Q Okay. Are you familiar with the
13 term, "Metadata"?

14 A Yes, I am.

15 Q How do you define metadata?

16 A So metadata is -- it has a lot
17 of different meanings to different folks.
18 So in the strict confines of the review
19 process and contributors, metadata
20 specifically only refers to the title and
21 keywords. It means other things, but in
22 this context, when we talk about metadata
23 within content and contributors, that's
24 what we're talking about.

25 Q Okay. When you personally take

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2 photographs, do you include any metadata?

3 A I do.

4 Q What metadata do you include
5 with your photographs?

6 A I have location, some of my
7 personal details, my website, copyright
8 notice, title, keywords. I think
9 description written by is an option.

10 Q And I assume your name is some
11 of that metadata?

12 A Yes.

13 Q Okay. When a Shutterstock
14 contributor submits a photograph for
15 Shutterstock's review, what does
16 Shutterstock do in regard to the metadata,
17 if there is any on the photograph?

18 MS. LACKMAN: Objection, vague.

19 THE WITNESS: So when a contributor
20 submits an image, the title/description
21 and the keywords are pulled in to the
22 upload process. So whatever the
23 contributor -- if the contributor had
24 added something previously -- then when
25 it's submitted, any sort of personal

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Age Group	Percentage
18-24	10%
25-34	15%
35-44	20%
45-54	25%
55-64	30%
65-74	35%
75-84	40%
85+	45%

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2 the photographs at issue in this case?

3 A I can't say definitively. I
4 don't know, because this came through a
5 different avenue. But I can't say.

6 Q And when you say, "A different
7 avenue," what avenue is that?

8 A In the account we're looking at,
9 this came through someone who was not the
10 rights holder who wrote an email in to us
11 and we looked at it.

12 Q I'm going to put a document in
13 front of you that we'll mark as Exhibit
14 17. It's STK 813 to 1138. It's a big
15 document, so we'll scroll through it and
16 we'll land on page 815.

17 (Exhibit 17 was marked for
18 identification.)

19 MS. LACKMAN: This is awfully tiny.
20 I can't see the text. Can you see it,
21 Heather?

22 THE WITNESS: Oh, that's better.
23 Thank you.

24 MS. LACKMAN: Also I know the witness
25 is in control, but do you mind scooting

1 H. SHIMMIN

2 over to the -- oh. Sometimes it's cut off
3 to the left and sometimes it's not, the
4 main text, so.

5 BY MR. BURROUGHS:

6 Q All right. Are you familiar
7 with these documents?

8 A Not specifically, but I
9 recognize what we're looking at.

10 Q Okay. What are these documents?

11 A We're looking at screenshots of
12 an image ID, the asset history.

13 Q Okay. Is it fair to say that
14 these are the documents reflecting
15 Shutterstock's use of the photographs at
16 issue in this case?

17 A Of Shutterstock's use, is that
18 what you said?

19 Q Mm-hm.

20 A I'm sorry. I just wanted to
21 make sure I heard you.

22 MS. LACKMAN: Objection. Vague.

23 THE WITNESS: So this is more a paper
24 trail of the image. It doesn't
25 necessarily say how it was used or where

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2 it was used.

3 BY MR. BURROUGHS:

4 Q Okay. What does it reflect?

5 MS. LACKMAN: Objection. Asked and
6 answered.

7 THE WITNESS: So for example, you've
8 got the image ID. In this case it was
9 deleted by admin. You can see what day it
10 was submitted. Some keywords that were
11 added -- so something was edited by
12 submitter, and then click on the 17th of
13 May, "Submitter deleted photo --"

14 BY MR. BURROUGHS:

15 Q Does that reflect the date that
16 the submitter actually deleted the photo,
17 or is that when Shutterstock deleted the
18 photo?

19 A So, yes, I was going to clarify.
20 The wording is narrow. So in this
21 instance, because we can see that spatel
22 disabled the account on the 11th, and in
23 this instance, "Submitter deleted photo,"
24 is when Shutterstock deleted the
25 thumbnails. So I don't write the code.

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2 I'm not sure why it doesn't say that, but
3 that's what that means in this instance.

4 Q Right. So what's the difference
5 from when Ms. Patel suspended the photo on
6 February 11th and when Shutterstock
7 deleted the photo on 5/17/2021?

8 MS. LACKMAN: Objection. Asked and
9 answered.

10 THE WITNESS: So the message here,
11 when the account was suspended, or
12 terminated, all the content was suspended
13 is what happened on the 11th. And then
14 when the engineers went in and removed the
15 thumbnails on the 17th, that's the
16 message --

17 THE REPORTER: What was the last
18 part?

19 THE WITNESS: Oh, and that happened
20 on the 17th.

21 BY MR. BURROUGHS:

22 Q Okay. So is it fair to say that
23 on February 11, 2021, Ms. Patel suspended
24 this photograph so that Shutterstock users
25 could no longer license it, but at that

1 H. SHIMMIN
2 time the photograph might still have been
3 displayed on Shutterstock URLs to the
4 public, and then on May 17, 2021,
5 Shutterstock deleted the photo and it was
6 no longer available to the public in any
7 form?

8 MS. LACKMAN: Objection.

9 Mischaracterizes the testimony. Calls for
10 speculation and vague as to, "The public."
11 Also vague as to, "Image," or, "Photo." I
12 can't remember what word you used, but
13 either would be vague.

14 BY MR. BURROUGHS:

15 Q Go ahead.

16 A So as we mentioned before, when
17 the account was terminated on the 11th,
18 all of the content was removed from the
19 Shutterstock website, from a licensing
20 perspective. It was not available for
21 licensing. And then then the engineers
22 removed it on the 17th, all of the
23 thumbnails were removed. And whether or
24 not that means the URL, I don't know. All
25 I can tell you is that it wasn't available

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2 for license, and then all of the
3 thumbnails in our system were removed.

4 Q So in February of 2021, it was
5 suspended, meaning it was no longer
6 available for license, and then in May of
7 2021 it was deleted, meaning it was
8 removed from all URLs in the system? Is
9 that accurate?

10 MS. LACKMAN: Objection. Calls for
11 speculation.

12 THE WITNESS: I'm going to not say
13 URL, because I don't know, but the
14 thumbnail was removed from the system.
15 Whether or not that's attached to a URL, I
16 can't definitively say.

17 BY MR. BURROUGHS:

18 Q Okay. And who's mcormier?

19 A He is -- he was, at the time, a
20 reviewer.

21 Q Okay. And the dates that we
22 just went over, and the distinction
23 between suspend and deleted, would that be
24 consistent along all of these images?
25 Meaning, if there's references to,

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2 "Suspend," and there's references to,
3 "Deleted," like there is in 815, would you
4 have the same answers for all of the rest
5 of these images?

6 MS. LACKMAN: Objection, calls for
7 speculation. Misstates prior testimony.

8 THE WITNESS: If the action,
9 "Submitter deleted photo," appears before
10 the account was terminated, it's pretty --
11 it's most likely the contributor deleted
12 the photo from their account. If it
13 happened after the termination or
14 suspension, then it would be internally.

15 BY MR. BURROUGHS:

16 Q Okay. Let's look at the top of
17 8/15. Do you see where it says, "The
18 Watchman & Virgin River Sunset"? Do you
19 see that?

20 A Yes.

21 Q And what's that?

22 A That would be the description
23 that the contributor put on the image when
24 they submitted it.

25 Q Okay. Do you recall ever seeing

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2 that title anywhere else?

3 A I don't recall specifically.

4 Q Would it surprise you to learn
5 that that's the title that Dr. McGucken
6 used for the photograph when he displayed
7 it?

8 MS. LACKMAN: Objection. Calls for
9 speculation.

10 THE WITNESS: Surprise? No.

11 BY MR. BURROUGHS:

12 Q Do you recall seeing that work
13 when you visited Dr. McGucken's Flickr
14 page?

15 MS. LACKMAN: Objection, foundation.

16 THE WITNESS: I don't recall which
17 image it was specifically that I saw.

18 BY MR. BURROUGHS:

19 Q Okay. So does this title get
20 automatically populated from the metadata
21 on the contributor's file?

22 MS. LACKMAN: Objection. Misstates
23 testimony.

24 THE WITNESS: Whatever is present in
25 the image -- pardon me. Whatever title

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2 and keywords are present in the image at
3 the time it's uploaded, it will appear for
4 the contributor before they can submit it,
5 and the contributor can change that before
6 they submit it. So either the contributor
7 kept it in the image when he uploaded it
8 to be submitted, or he added the title
9 before submission. We don't know. So it
10 could have been there or he could have
11 added it. We don't know.

12 BY MR. BURROUGHS:

13 Q Okay. Did Shutterstock add any
14 metadata to this photograph before it made
15 it available for license?

16 MS. LACKMAN: Objection. Vague as
17 to, "Shutterstock." Vague as to,
18 "Metadata."

19 THE WITNESS: Could you scroll down
20 just a little bit, please?

21 BY MR. BURROUGHS:

22 Q Sure.

23 A Yeah, that's perfect. So I
24 can't say. Sometimes this is -- I don't
25 want to use the word, "Cryptic," but

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2 sometimes it says, you know, "Setting
3 illustration to: 0." Well, Martin [ph]
4 probably didn't do that. It was probably
5 already that way. So unfortunately this
6 isn't accurate enough for me to give you a
7 confident answer. But contributor -- or,
8 sorry. Reviewers cannot add keywords, so
9 he may have removed these keywords.
10 And -- I'm sorry -- reviewers are not
11 adding titles or changing the title.

12 Q Okay. Does Shutterstock have a
13 policy whereby, at the time they suspend a
14 photograph, they provide notice to any
15 licensees for that photograph?

16 MS. LACKMAN: Objection. Vague.

17 THE WITNESS: Not usually.

18 BY MR. BURROUGHS:

19 Q Does it have any guideline in
20 that regard?

21 MS. LACKMAN: Objection. Vague.

22 THE WITNESS: We rarely send out kill
23 notices. We're usually able to resolve
24 the issue with the rights holder directly.
25 And the few times that we do have to send

1 H. SHIMMIN

2 a kill notice, we do, but we usually do
3 not.

4 BY MR. BURROUGHS:

5 Q So is it fair to say that even
6 as of May 17, 2021, when this photo was
7 deleted, Shutterstock still had not
8 advised the licensees, if there were any,
9 for this particular photograph?

10 MS. LACKMAN: Objection. Calls for
11 speculation. Misstates testimony.

12 THE WITNESS: I can't say because I
13 don't recall the exact day the kill notice
14 was sent --

15 BY MR. BURROUGHS:

16 Q Was it in 2021?

17 A I'm sorry. I have no idea when
18 it was sent. I know it was sent. I don't
19 recall when it was.

20 Q Could it have been more than
21 seven months after you deleted the
22 photograph?

23 MS. LACKMAN: Objection. Misstates
24 the testimony.

25 THE WITNESS: I don't have a good

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2 estimation, so I'm not going to -- I don't
3 know.

4 BY MR. BURROUGHS:

5 Q Is it possible that it was more
6 than a year after you received notice of
7 the claims?

8 MS. LACKMAN: Objection. Same
9 objection.

10 THE WITNESS: Anything's possible. I
11 don't know the date it was sent, so I
12 can't say.

13 BY MR. BURROUGHS:

14 Q Okay. Were notices sent to each
15 of the 930 licensees for the McGucken
16 photographs?

17 MS. LACKMAN: Objection. Asked and
18 answered.

19 THE WITNESS: Yes. A kill notice was
20 issued for the image that was licensed.

21 BY MR. BURROUGHS:

22 Q And was that all done at once,
23 or was that done over a period of time?

24 MS. LACKMAN: Objection. Vague.

25 THE WITNESS: Since I didn't send it,

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2 I can't say specifically how many, but I
3 think it took a day or two.

4 BY MR. BURROUGHS:

5 Q Okay. And have any of those
6 licensees made claims against Shutterstock
7 for licensing them a work that it didn't
8 have the right to license?

9 MS. LACKMAN: Objection. Calls for
10 speculation. No foundation.

11 "Shutterstock didn't have the right to
12 license."

13 THE WITNESS: Not to my knowledge.

14 BY MR. BURROUGHS:

15 Q Does Shutterstock maintain funds
16 or insurance to pay for such claims?

17 MS. LACKMAN: Objection. Calls for
18 speculation.

19 THE WITNESS: I know Shutterstock has
20 insurance. I do not know the details of
21 the policy.

22 BY MR. BURROUGHS:

23 Q Okay. Did any of the 930
24 licensees respond to the kill notices in
25 any way?

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2 A Yes.

3 Q And what responses were
4 received?

5 A I answered a few, and the
6 only -- the same question was asked is,
7 "Could we get a thumbnail of what the
8 image looked like?"

9 Q Anything else?

10 A Not that I answered. Or not
11 that I saw.

12 Q I'm going to put another
13 document in front of you. I'm going to
14 mark as Exhibit 18. STK-5248.

15 (Exhibit 18 was marked for
16 identification.)

17 MS. LACKMAN: While she's putting
18 that up, can the court reporter give me a
19 time check on how long we've been on the
20 record?

21 THE REPORTER: A total of four hours
22 and 31 minutes.

23 BY MR. BURROUGHS:

24 Q Are you familiar with this
25 document?

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2 A No, I'm not.

3 Q Have you ever seen it before?

4 A No, I have not.

5 Q Okay. Let's take a look, for
6 example, at line 39 in this, where it
7 says, "EXIF key creator McGucken 45 surf
8 45 epic [ph]." Do you see that?

9 A Yes.

10 Q Does that appear to be metadata
11 to you?

12 MS. LACKMAN: Objection. Calls for
13 speculation.

14 THE WITNESS: It appears to be. I've
15 never seen this before or this information
16 before, so I can't say definitively.

17 BY MR. BURROUGHS:

18 Q Okay. Is it fair to say most
19 photographs have metadata?

20 MS. LACKMAN: Objection. Calls for
21 speculation. She's not designated as an
22 expert witness on most photographs.

23 BY MR. BURROUGHS:

24 Q Go ahead.

25 A Yes. Photographs can contain

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2 metadata.

3 Q In your experience as a
4 photographer, do most photographs you see
5 have metadata?

6 MS. LACKMAN: Objection. Calls for
7 speculation.

8 THE WITNESS: I mean, I add metadata
9 to mine.

10 BY MR. BURROUGHS:

11 Q I'll take this down and put up
12 Exhibit 19 which is STK 5338. Do you
13 recognize this document? Are you familiar
14 with it?

15 (Exhibit 19 was marked for
16 identification.)

17 A No, I don't believe I've seen
18 this before.

19 Q Do you want to take a moment to
20 review it? It's pretty short, I believe.
21 Go all the way down to the bottom.

22 A I haven't read the top yet.
23 Sorry. Thanks. Okay.

24 Q All right. I want to direct
25 your attention to the, "Metadata Parsing,"

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2 section. It says, "EXIF data is parsed
3 from images and saved to SDP in the
4 media_metadata_v2 topic." Do you see
5 that?

6 A Yes.

7 Q Is that consistent with what
8 Shutterstock does in regard to the EXIF
9 data for submitted photographs?

10 MS. LACKMAN: Objection. Vague as to
11 time.

12 THE WITNESS: So this is treated for
13 the content pipeline, which is a group of
14 engineers that deal with the technical end
15 of ingesting activity and ingesting flows.
16 I am not in that world, and I really can't
17 say anything. I know nothing about this
18 end of the process.

19 BY MR. BURROUGHS:

20 Q Is it true that the EXIF data is
21 stripped by Shutterstock from the original
22 contributor's file?

23 MS. LACKMAN: Objection. Vague as to
24 time.

25 THE WITNESS: I'm not involved in the

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2 process, and so I won't answer because I
3 don't know.

4 BY MR. BURROUGHS:

5 Q Do you have any reason to
6 believe that the statements made on this
7 Shutterstock document are inaccurate in
8 any way?

9 MS. LACKMAN: Objection. Same
10 objection as to time.

11 THE WITNESS: No. This is a process
12 that I don't work with, so I really can't
13 give you insights.

14 BY MR. BURROUGHS:

15 Q I'm going to put a document that
16 we're going to put in front of you that
17 we're going to mark as Exhibit 20. This
18 is STK 5335.

19 (Exhibit 20 was marked for
20 identification.)

21 MS. LACKMAN: I also do want to
22 object to the extent -- it doesn't appear
23 that this topic was within the scope of
24 the deposition -- of the 30(b)(6) notice.

25 //

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2 BY MR. BURROUGHS:

3 Q Are you familiar with this
4 document?

5 A I believe -- can you scroll down
6 a little bit further, just to make sure
7 I'm remembering correctly. That's the
8 end. I believe so, if it's the one I'm
9 thinking it is.

10 Q Okay. And whose photos are
11 referenced in this correspondence?

12 A I can't say for certain because
13 I don't have the IDs memorized, but I
14 would assume it was one of the images in
15 question.

16 Q One of the images at issue in
17 this case?

18 A Yes.

19 Q Okay. And again, you see the
20 Flickr account for
21 herosjourneymythology45surf.

22 A I see that. Is that his Flickr
23 account?

24 Q Okay. And so you see references
25 to at least two photographs, right?

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2 Shutterstock asset ending in 187, and

3 Shutterstock asset ending in 903?

4 A Yes, I see those.

5 Q Okay. Do you know what, if
6 anything, was done in response to this
7 notice?

8 MS. LACKMAN: Objection. Asked and
9 answered.

10 THE WITNESS: I'm fairly certain this
11 is the Good Samaritan who wrote in
12 regarding that contributor Raza that I
13 investigated based on this Good Samaritan
14 email.

15 BY MR. BURROUGHS:

16 Q Okay. Are you familiar with
17 software plugins?

18 A Yes. Vaguely. I mean --

19 MS. LACKMAN: And I would just
20 object. It's outside the scope.

21 BY MR. BURROUGHS:

22 Q Does Shutterstock offer any
23 plugins?

24 MS. LACKMAN: Same objection.

25 THE WITNESS: It does.

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2 BY MR. BURROUGHS:

3 Q What plugins does Shutterstock
4 offer?

5 A I know there are more than this,
6 but the one that I am aware of is one for
7 Photoshop.

8 Q Okay, and how does that work in
9 connection with the Shutterstock platform?

10 MS. LACKMAN: I'll just object.
11 Outside the scope as to this whole line of
12 questioning, so save ourselves some time.
13 You can answer.

14 THE WITNESS: Yeah, so it's similar
15 to the API we talked about earlier, where
16 in Photoshop you can download a plugin,
17 and through this plugin one can access
18 Shutterstock's library and licensed
19 content via this plugin on Shutterstock
20 and use that in your project without
21 leaving Photoshop.

22 BY MR. BURROUGHS:

23 Q Okay. So I could be in
24 Photoshop working on a project and
25 directly from there I can access the

1 H. SHIMMIN

2 Shutterstock library and purchase a
3 license or obtain a photograph from
4 Shutterstock?

5 MS. LACKMAN: Objection. Calls for
6 speculation.

7 THE WITNESS: That is my
8 understanding how it works. I haven't
9 done it, but I understand that's how it
10 works.

11 BY MR. BURROUGHS:

12 Q Okay. I'm going to put a
13 document in front of you we're going to
14 mark as Exhibit 21. It's MCG 3622 to
15 3623. Are you familiar with a company
16 named ZCool?

17 (Exhibit 21 was marked for
18 identification.)

19 A I am.

20 Q Okay. What is ZCool?

21 MS. LACKMAN: Objection to the extent
22 it's outside the scope.

23 THE WITNESS: ZCool is our authorized
24 reseller in China.

25 //

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Do you know what URLs they run?

4 A I don't.

5 Q I'm going to put another
6 document in front of you we're going to
7 mark as Exhibit 22, MCG 1140. Have you
8 seen this document before?

9 (Exhibit 22 was marked for
10 identification.)

11 A I don't believe so.

12 Q Okay. Is Stock Fresh a partner
13 of Shutterstock?

14 MS. LACKMAN: Objection to the extent
15 it calls for a legal interpretation.

16 THE WITNESS: I'm not familiar with
17 Stock Fresh at all.

18 BY MR. BURROUGHS:

19 Q Do you know how Stock Fresh
20 would have the photos issued in this case
21 on its website in July of this year?

22 MS. LACKMAN: Objection. No
23 foundation. Calls for speculation.

24 THE WITNESS: Since I'm not familiar
25 with the site, I don't know.

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2 BY MR. BURROUGHS:

3 Q Okay. Another document in front
4 of you we'll mark as Exhibit 23, MCG 1859
5 to 1882. Does this look familiar to you?

6 (Exhibit 23 was marked for
7 identification.)

8 MS. LACKMAN: Object to this an
9 unauthenticated document. You're also
10 scrolling way too fast.

11 MR. BURROUGHS: As I mentioned, if
12 you need us to slow down, you can let us
13 know and we're happy to do so.

14 THE WITNESS: Again, it's Stock
15 Fresh. I've never even heard of Stock
16 Fresh so I don't really have anything to
17 say about it.

18 BY MR. BURROUGHS:

19 Q Let's stop here. And have you
20 seen these 15 percent off coupons on other
21 websites in relation to Shutterstock
22 content?

23 A I know they exist. I don't
24 think I've personally come upon them.

25 Q Okay. Do you know if any of

1 H. SHIMMIN

2 Shutterstock's partners or authorized
3 resellers are still displaying Dr.
4 McGucken's photographs that are at issue
5 in this case to the public?

6 MS. LACKMAN: Objection. No
7 foundation. Calls for legal conclusion as
8 to, "Displaying." Vague as to, "His
9 photographs." I think that's all.

10 THE WITNESS: I don't know.

11 BY MR. BURROUGHS:

12 Q Has Shutterstock taken any steps
13 to ensure that its partners and resellers
14 have removed the photographs at issue in
15 this case from their sites?

16 MS. LACKMAN: Objection. No
17 foundation. Objection as to the reference
18 to the term, "Partner," as it calls for a
19 legal conclusion.

20 THE WITNESS: I don't know.

21 BY MR. BURROUGHS:

22 Q Okay. So as you sit here today,
23 you can't recall Shutterstock doing
24 anything to ensure that its partners and
25 authorized resellers are no longer

1 H. SHIMMIN

2 displaying the photos at issue in this
3 case, correct?

4 MS. LACKMAN: Same objection,
5 including foundation.

6 THE WITNESS: I'm saying I'm not
7 aware of any interaction Shutterstock has
8 had with any of its partners or licensed
9 resellers regarding this content. Whether
10 or not any action has been taken, I can't
11 say. I'm not saying it hasn't.

12 BY MR. BURROUGHS:

13 Q I'm going to put a document in
14 front of you that we'll mark as Exhibit
15 24. We'll do MCG 2026. We'll do the
16 first five pages of its exhibit, because
17 it's very long.

18 (Exhibit 24 was marked for
19 identification.)

20 MS. LACKMAN: Can we have a restroom
21 break, then, before we look at this?

22 THE WITNESS: Yeah.

23 MR. BURROUGHS: Oh, absolutely.

24 THE REPORTER: Off the record at

25 4:02.

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2 (Off the record.)

3 THE REPORTER: We're back on the
4 record at 4:14 p.m.

5 BY MR. BURROUGHS:

6 Q Okay. So we're going to put a
7 document in front of you marked as Exhibit
8 24. It's MCG 2026. Have you ever seen
9 this website before?

10 MS. LACKMAN: Objection to the
11 characterization of this as a website.

12 THE WITNESS: Yes, I have.

13 BY MR. BURROUGHS:

14 Q And what's this website?

15 A This is TinEye.

16 Q Okay, and what is TinEye?

17 A TinEye is a reverse image
18 search, it looks like.

19 Q Okay. And is TinEye a
20 Shutterstock partner?

21 MS. LACKMAN: Objection as to,
22 "Partner." Calls for a legal conclusion.

23 THE WITNESS: I believe Shutterstock
24 has a relationship with TinEye. I don't
25 believe it can classify it as a partner,

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2 but there is a relationship.

3 BY MR. BURROUGHS:

4 Q What is the relationship?

5 A I don't know all the details,
6 but, for example, there's a sponsored
7 search, so if someone clicks on it, goes
8 to Shutterstock and signs up to be a
9 customer, then TinEye would get a referral
10 fee for that is my understanding. I don't
11 know the nuances of the relationship.

12 Q Okay. And are the assets in
13 this exhibit that are marked as
14 www.shutterstock.com Shutterstock
15 photographs?

16 MS. LACKMAN: Objection, vague.

17 THE WITNESS: This would be an image
18 that was approved on Shutterstock's site.

19 BY MR. BURROUGHS:

20 Q Okay. And is Shutterstock
21 providing the photographs to TinEye via
22 its API?

23 MS. LACKMAN: Objection to the term,
24 "Providing." It's misstating the
25 testimony.

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2 BY MR. BURROUGHS:

3 Q Go ahead.

4 A Well, how a reverse image search
5 works is a person comes to the site and
6 copiers over an image for it to be
7 searched to be found. So in that case,
8 no, it's not Shutterstock, it's the
9 individual who is searching for the image.

10 Q And then where are the results
11 coming from?

12 MS. LACKMAN: Objection. Calls for
13 speculation.

14 THE WITNESS: Since I do not work for
15 TinEye, I do not know.

16 BY MR. BURROUGHS:

17 Q Does Shutterstock provide photos
18 for the results?

19 MS. LACKMAN: Objection. Calls for
20 speculation. Outside the scope. Vague.

21 THE WITNESS: I do not know.

22 BY MR. BURROUGHS:

23 Q Okay. On page 1 of this
24 exhibit, does this appear to be a
25 Shutterstock photograph?

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2 A That is an image that has been
3 submitted to Shutterstock and approved.

4 Q Okay. And would this image be
5 live on Shutterstock's site on July 8,
6 2022?

7 MS. LACKMAN: Objection to
8 foundation.

9 THE WITNESS: You'd have to click on
10 it to see if it were available. I can't
11 say from this.

12 BY MR. BURROUGHS:

13 Q Would it show up in these search
14 results if it was not live on
15 Shutterstock's site?

16 MS. LACKMAN: Objection. Calls for
17 speculation. No foundation.

18 THE WITNESS: It's possible.

19 BY MR. BURROUGHS:

20 Q And how would that happen?

21 MS. LACKMAN: Objection. Calls for
22 speculation.

23 THE WITNESS: I don't know. I'm not
24 an engineer. I don't know.

25 //

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Okay. And I see that a 15
4 percent off coupon for Shutterstock. Am I
5 correct in if I go to Shutterstock and
6 use, "Tineye15," I'll get 15 percent off
7 whatever my subscription package cost is?

8 A I don't know. I don't work with
9 coupons and creating them, so I'm not sure
10 about the nuances of how those will work.
11 I would imagine, for a new customer, yes.

12 Q Okay. And then on the right
13 hand of your screen, you see, "Similar
14 images on Shutterstock." Do you see that?

15 A Yes.

16 Q Is that a Shutterstock
17 advertisement that incorporates certain
18 Shutterstock photographs?

19 MS. LACKMAN: Objection to
20 foundation.

21 THE WITNESS: It appears to be an
22 advertisement for Shutterstock.

23 BY MR. BURROUGHS:

24 Q Okay. And let's look at the
25 other pages of this exhibit. We can go

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2 slowly or as quickly as you'd like. Would
3 your answers for these other photographs
4 and references to Shutterstock be
5 consistent with the answers you gave for
6 the first example?

7 MS. LACKMAN: Objection to the extent
8 it calls for speculation.

9 THE WITNESS: Yes.

10 BY MR. BURROUGHS:

11 Q Okay. And as of July 8, 2022,
12 had Shutterstock contacted TinEye to
13 ensure it had removed the photographs at
14 issue in this case?

15 MS. LACKMAN: Objection. Calls for
16 speculation.

17 THE WITNESS: Well, I don't know. It
18 would not fall under the purview of the
19 DMCA because Shutterstock has a
20 relationship with them.

21 BY MR. BURROUGHS:

22 Q Is your answer, "I don't know"?

23 A I don't know.

24 Q Okay. Are you aware of any
25 steps that Shutterstock has taken to

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1 H. SHIMMIN

2 ensure that the photographs we showed in
3 this case do not show up in TinEye search
4 results?

5 MS. LACKMAN: Objection. No
6 foundation.

7 THE WITNESS: Shutterstock can't
8 control what people are searching for, so
9 there's' no way to say, "Don't show this."
10 It's removed from the Shutterstock site.
11 How TinEye's algorithm works, I don't
12 know. So it's searching by an algorithm
13 to find a match.

14 BY MR. BURROUGHS:

15 Q And you're not aware of
16 Shutterstock taking any steps -- oh, go
17 ahead.

18 A I said, TinEye is a separate
19 entity, so you would have to ask TinEye
20 how that works.

21 Q And you're not aware of any
22 steps that Shutterstock's taken to make
23 sure its algorithm doesn't return its
24 Shutterstock results, correct --

25 A I personally am not.

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2 Q Are you aware of anyone at
3 Shutterstock doing so?

4 A No.

5 Q Looking at this number in front
6 of you for the first Shutterstock image on
7 this page, does that number look familiar
8 to you?

9 A It appears to be an asset ID
10 number.

11 Q A Shutterstock asset ID number?

12 MS. LACKMAN: Objection. Calls for
13 speculation. Foundation.

14 THE WITNESS: It appears to be, yes.
15 BY MR. BURROUGHS:

16 Q Are you aware of anywhere from
17 which TinEye could have obtained that ID
18 number, other than from Shutterstock?

19 MS. LACKMAN: Objection. Asked and
20 answered. Calls for speculation.

21 THE WITNESS: I don't know.

22 BY MR. BURROUGHS:

23 Q And can you go through the other
24 pages of this exhibit and tell me if your
25 answer would be any different?

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2 A No.

3 Q Okay. So it appears that
4 TinEye, as of July 8, 2022, was displaying
5 the photos at issue in this case, along
6 with their Shutterstock ID numbers and
7 Shutterstock's web URL, correct?

8 MS. LACKMAN: Objection. Object to
9 the term, "Images." Object to the term as
10 being vague. Misstates the testimony.
11 Object to the term, "Displayed." Calling
12 for a legal conclusion. Object to the
13 question as testimony.

14 BY MR. BURROUGHS:

15 Q Go ahead.

16 MS. LACKMAN: Misstates the
17 testimony. Sorry. Go ahead.

18 THE WITNESS: I mean, it's a URL. It
19 doesn't necessarily go to the asset detail
20 page.

21 BY MR. BURROUGHS:

22 Q Okay. But otherwise is that
23 accurate?

24 MS. LACKMAN: Same objections. Asked
25 and answered.

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2 THE WITNESS: Yeah. It's the same
3 answer.

4 BY MR. BURROUGHS:

5 Q Okay. Do you know if the
6 photographs at issue in this case are
7 appearing on any other third-party or
8 partner sites?

9 MS. LACKMAN: Objection to the term,
10 "Partner." Calls for legal conclusion.
11 Calls for speculation. Outside the scope.

12 THE WITNESS: I don't know.

13 BY MR. BURROUGHS:

14 Q And you haven't looked, right?

15 A No.

16 Q And has anyone at Shutterstock
17 looked at its third-party and authorized
18 reseller sites to see if the photos are
19 still displaying on those sites?

20 A I personally have not.

21 Q Are you aware of anyone at
22 Shutterstock doing so?

23 A No.

24 Q I'm going to put a document in
25 front of you that we're going to mark as

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2 Exhibit 25. It's STK 1139. Have you seen
3 this document before?

4 (Exhibit 25 was marked for
5 identification.)

6 A Yes.

7 Q Okay. What is this document and
8 how are you familiar with it?

9 A This document is a license
10 history of -- you can export it as a .csv
11 file. It's got the image ID number and
12 when and who licensed it, and what type of
13 license.

14 Q Okay. And do you know who
15 compiled this document?

16 A No, I do not.

17 Q Okay. Let's go through it
18 column by column here. In the first
19 column, what is the media ID?

20 A that is the asset ID number.

21 Q Okay, and that's the number that
22 we were just looking at on TinEye, for
23 example?

24 MS. LACKMAN: Objection. Misstates
25 the document. Misstates the testimony.

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2 No foundation.

3 THE WITNESS: Yes. It's the ID
4 that's assigned to the asset.

5 BY MR. BURROUGHS:

6 Q Okay. And that ID is used on
7 Shutterstock's site and also on the
8 partner sites, correct?

9 A Yes.

10 Q In the second column, I believe
11 it says, "Media type: Image." Does that
12 refer to a photograph?

13 A Yes. "Image," is a photograph.

14 Q Okay. And the third column,
15 "Media ID," what does that column
16 indicate?

17 A I actually don't know. I never
18 look at that column. It's not really
19 relevant to what I do.

20 Q Okay. Does the phrase, "Mason
21 Photo," mean anything to you?

22 A Mason's the admin system. The
23 old admin system that we look at the
24 contributor account information in.
25 That's the platform.

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2 Q Okay. What's the next column?

3 A Contributor.

4 Q Okay. And let's toggle through.

5 I see on page 1, at least two

6 contributors. I believe the second one is

7 Hane Street. Is that accurate?

8 MS. LACKMAN: Objection. I think you

9 were calling about column D or column E.

10 Can you expand? We produced this

11 natively, right? No, no, expand the

12 columns.

13 BY MR. BURROUGHS:

14 Q I'm sorry, do you understand the
15 question?

16 A Well, the first column is a
17 contributor ID number, and the second
18 column, which is E, is the contributor
19 name.

20 Q Okay. Let's scroll through to
21 the bottom. If you want us to go faster
22 or slower, let us know. So is it fair to
23 say that three different contributors
24 contributed the photography at issue in
25 this case?

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2 A Yes.

3 Q Okay. Now for the contributor
4 known as Hane Street, could you identify
5 every contribution that he made to this
6 site that appeared to you to be
7 photography copied from Dr. McGucken?

8 MS. LACKMAN: Confusing.

9 THE WITNESS: I mean, from the list
10 of image IDs that we received, it will
11 show, in this document, which of the
12 images at issue were submitted by Hane
13 Street.

14 BY MR. BURROUGHS:

15 Q Okay. Do you know if Hane
16 Street submitted any other images copied
17 from Dr. McGucken that aren't set forth in
18 this chart, that aren't identified in the
19 complaint?

20 A I don't know.

21 Q We looked at as Exhibit 6.

22 A I don't know. I don't have all
23 the image number memorized.

24 Q Okay. And does reviewing this
25 document refresh your recollection as to

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2 the true number of licenses that
3 Shutterstock granted to its customers for
4 the images at issue in this case?

5 A Well, it says 939, but some of
6 these could be comps, which are not
7 considered a license.

8 Q Okay. What is a comp?

9 A The comp is a -- you can
10 download a watermarked comp of an image,
11 and a client can try it out in their
12 project before they license it.

13 Q Okay. So is it more likely than
14 not that Shutterstock provided those
15 watermarked comps of Dr. McGucken's
16 photographs to its customers?

17 A We have to see. If you sort the
18 column by license type, you can see if
19 that is the case. I don't know offhand.

20 Q Okay. We'll scroll up.

21 A If you do it alphabetically,
22 that would be the fastest way to do it, I
23 think. Scroll down a little bit, please.
24 So it does not appear to be the case.

25 Q Okay. So is it accurate to say

1 H. SHIMMIN

2 that Shutterstock licensed the images at
3 issue in this case to its clients 939
4 times?

5 MS. LACKMAN: Objection. Vague.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q Okay. Does it indicate anywhere
9 in this chart the date that Shutterstock
10 sent any of these folks the kill notices
11 you mentioned earlier?

12 A It would not be in this
13 document.

14 Q Where would they be?

15 A This runs a report of the
16 licenses issued. It wouldn't show, even
17 when a kill notice was sent. We would
18 have to look at Salesforce to see when the
19 kill notice was sent.

20 Q And how would you do that --

21 A If it were sent through
22 Salesforce, which it probably was.

23 Q Okay. So how would you do that?

24 A Just go into Salesforce and
25 search like any other email system.

1 H. SHIMMIN

2 Q Would you search for, "Kill
3 notice," or would you search for something
4 else?

5 A I would search for one of the
6 image IDs. That's how I would do it.

7 Q And if a kill notice had been
8 sent, there would be an indication in
9 Salesforce that it had been sent on a
10 particular date?

11 A It would show a record of the
12 email sent to the clients, yes.

13 Q Okay. Has Shutterstock run that
14 search?

15 A I don't know. I haven't
16 personally. I don't know if anyone else
17 has.

18 Q Okay. Looking at column F, are
19 those the dates that Shutterstock entered
20 into the license with the customer?

21 A Could you scroll up to the top,
22 please? So that's the time that the
23 client licensed the image.

24 Q Okay. And you see the licenses
25 under G are enhanced?

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2 A Yes --

3 MS. LACKMAN: Objection to the extent
4 it mischaracterizes the document.

5 BY MR. BURROUGHS:

6 Q What does that mean to you?

7 A It means that the type of
8 licensed that was purchased for this asset
9 was an enhanced license.

10 Q And that would allow the
11 Shutterstock customer to do more with the
12 photograph than a standard license,
13 correct?

14 A Correct.

15 Q Okay. What is the integrated --
16 well, it says, "Integrated_m," there. Do
17 you see that?

18 A Yes.

19 MR. BURROUGHS: I suppose we can
20 expand that out, Ms. Zaharia.

21 BY MR. BURROUGHS:

22 Q What's an integrated media
23 license?

24 A That means that it was licensed
25 through one of our API partners.

1 H. SHIMMIN

2 Q Okay. Does it indicate in this
3 document which of the partners licensed
4 the work?

5 A It does in column M [ph].

6 Q Okay. So is it fair to say that
7 ZCool is a partner of Shutterstock?

8 A Yes.

9 MS. LACKMAN: Same objection as
10 before throughout about, "Partner."

11 BY MR. BURROUGHS:

12 Q And Wix is a partner of
13 Shutterstock?

14 MS. LACKMAN: Same objection.

15 THE WITNESS: They're part of the
16 API. Shutterstock's API.

17 BY MR. BURROUGHS:

18 Q And Endurance is a partner of
19 Shutterstock?

20 A It says so. I'm not familiar
21 with Endurance specifically, but.

22 Q So ZCool, they run the Hello RF
23 site, right?

24 A Yes.

25 Q Do you submit your photos to

1 H. SHIMMIN

2 Hello RF? Did you indicate that earlier,
3 personally?

4 MS. LACKMAN: Objection. Vague.
5 Misstates -- well, asked and answered,
6 sort of. Misstates testimony.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A No, I don't.

10 Q Okay. But you understand that
11 ZCool owns the Hello RF domain?

12 A I know they're sister companies.
13 I don't know who owns the domain name.

14 Q Does Shutterstock have any
15 ownership of ZCool?

16 MS. LACKMAN: Objection. Outside the
17 scope.

18 THE WITNESS: I don't know.

19 BY MR. BURROUGHS:

20 Q Okay. Let's look back into
21 column G. "Media." What does that
22 license entail?

23 A A media license has -- it's just
24 adding more uses. It's another type of
25 license.

1 H. SHIMMIN

2 Q So that would allow for the use
3 of the photograph at issue in a book, for
4 example, correct?

5 A Some of these are bespoke
6 licenses, but generally it gives them more
7 usage. Sorry. Some blanks for words.

8 Q What do you mean by more usage?

9 A I mean, it allows them to do
10 more with the content than just a standard
11 license.

12 Q Okay. And then what is a media
13 digital license?

14 A These are nuanced. I think it's
15 only, like all digital uses. It's just
16 another license type.

17 Q Okay. Scroll down a little bit.
18 What is a Shutterstock multi-share
19 license?

20 A It's a license that allows a
21 company to have multiple users, multiple
22 seats, to be able to download and use
23 content.

24 Q Okay. Scroll down. Okay. What
25 is a premier license?

1 H. SHIMMIN

2 A A premier license are more of a
3 top-tier license that has very few
4 restrictions on how the client can use it.

5 Q So for example, does a premier
6 license give the user the right to use it
7 on unlimited units of product?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: Merchandise. It allows
10 for merchandise. Without a cap of the
11 number.

12 BY MR. BURROUGHS:

13 Q Does Shutterstock cap the units
14 in its merchandise licenses?

15 MS. LACKMAN: Objection. Same
16 objection. Vague.

17 THE WITNESS: No. Not that I can
18 recall.

19 BY MR. BURROUGHS:

20 Q Okay. So looking again at
21 column E, has Shutterstock terminated all
22 of these contributors?

23 A Yes.

24 Q Let's look at column H. Let's
25 go to the top. What is asset price?

1 H. SHIMMIN

2 A That is the commission
3 Shutterstock received for that asset.

4 Q Okay. So that was the amount
5 paid to Shutterstock to use the image at
6 issue?

7 A Yes.

8 Q Okay. And we can see that,
9 based on the type of license that's being
10 granted by Shutterstock, the amount of the
11 asset price fluctuates, correct?

12 MS. LACKMAN: Objection. Vague.

13 THE WITNESS: It does. It varies
14 depending on the type of license.

15 BY MR. BURROUGHS:

16 Q Okay. Does Shutterstock set
17 those prices?

18 MS. LACKMAN: Objection. Vague.
19 Outside the scope.

20 THE WITNESS: Yes.

21 BY MR. BURROUGHS:

22 Q Okay. Does the contributor have
23 any say on what those prices are?

24 A No.

25 Q Okay. Looking at the next

1 H. SHIMMIN

2 column, column I, "Commission," what's
3 that?

4 A That is the contributor royalty
5 that they receive.

6 Q Okay. So for example, in line
7 2, the contributor received a \$19.50
8 commission for the use of the photograph
9 identified in column A, correct?

10 A Yes.

11 Q Okay. And the aggregate
12 commission are reflected in the
13 contributor portal that we looked at
14 earlier, correct?

15 A Yes.

16 Q Okay. Looking at the next
17 column, "User name," what's that?

18 A This would be the user name of
19 the licensee.

20 Q Okay. Now is this the username
21 that they've used when they've signed up
22 with Shutterstock?

23 A Or if they have like a team or a
24 multi-seat, it would be that individual
25 under that same subscription. So larger

1 H. SHIMMIN

2 companies, say like HBO or Netflix might
3 have 15 separate users so they can see who
4 licensed what. So not necessarily the
5 name they use when they created the
6 account.

7 Q Okay. And column K, if we can
8 expand that out. "Account service."
9 What's that column?

10 A That is the account ID of the
11 customer.

12 Q So if it was HBO, for example,
13 that would be their account number?

14 A Yes.

15 Q Okay. Column L, what's that?

16 A If it were an organization, so
17 for example, the top level HBO, that would
18 be that number. You've noticed not
19 everybody has that because it's not
20 applicable to every single type of
21 account.

22 Q I see. But scrolling down, for
23 example, you see Microsoft Ads?

24 A Yes.

25 Q Okay. So that would indicate to

1 H. SHIMMIN

2 you that Microsoft Ads purchased a license
3 for one of the photos at issue in this
4 case, correct?

5 A That account did, yes.

6 Q Same with Lonely Planet?

7 A Yes.

8 Q Okay. And same with all the
9 other organizations listed in this column?
10 We can scroll down to the bottom slowly.
11 Okay. So it's fair to say that all the
12 folks in columns J and M purchased license
13 from Shutterstock for the photography at
14 issue in this case?

15 A Yes.

16 Q Okay. And looking at column N,
17 what's that?

18 A The email domain. So that's the
19 domain of the email account that they
20 supplied with us. So it's gmail.com or
21 microsoft.com. It's just whatever email
22 they signed up to create the account with.

23 Q Okay. So N would be the domain
24 for the site and L would be the email
25 addresses for the licensee?

1 H. SHIMMIN

2 A Yes.

3 Q Okay. And then the next column
4 appears to be addresses for the licensees,
5 is that correct?

6 A Yes.

7 Q And then V and W, do those
8 reflect that the license is either paid or
9 comped?

10 A Yes.

11 Q Okay. Let's look at the second
12 tab, "License type," at the bottom. So
13 does this reflect an aggregate of the data
14 in the first tab reflecting the moneys
15 received by Shutterstock for the licenses
16 relevant to the photos at issue in this
17 case?

18 A Yes.

19 Q Okay. Let's look at, "Download
20 by country." Okay. And let's look at,
21 "Download by contributor." What does this
22 page mean?

23 A It just says in this list of
24 images how many were submitted by what
25 contributor and how many.

1 H. SHIMMIN

2 Q And it looks like the vast
3 majority, 935 of those, were relevant to
4 the Hane Street photographs?

5 A Yes.

6 Q Okay. Let's go back to license
7 type real briefly. So looking at this
8 document, is it fair to say that
9 Shutterstock licensed the photos at issue
10 in this case at least 938 times to its
11 customers?

12 A Yes.

13 MS. LACKMAN: Objection. Vague. I
14 just want to be careful about -- the full
15 range of images were not licensed 938
16 times. I just want to make sure that's
17 clear for the record. Unless that's your
18 testimony.

19 BY MR. BURROUGHS:

20 Q Okay. And then looking at
21 column D, is it accurate to say that
22 Shutterstock was paid at least \$2,131.60
23 for the licenses relevant to the
24 photography at issue in this case?

25 A Yes.

1 H. SHIMMIN

2 Q Okay. You can pull that
3 document down, and we'll put up Exhibit
4 26, which is MCG 003606. So take a moment
5 and tell us if you recognize this
6 document.

7 (Exhibit 26 was marked for
8 identification.)

9 A Yes.

10 Q What is this document and how do
11 you recognize it?

12 A A customer requested a license
13 confirmation letter and so I provided them
14 with one.

15 Q Okay. Now at the time you sent
16 this letter, were you aware of the claims
17 relating to this photograph by Dr.
18 McGucken?

19 A I don't recall if I was or not.

20 Q Okay. Do you recall looking to
21 see if there were any claims relevant to
22 this photograph before sending this letter
23 to the recipient?

24 A No.

25 Q Okay. Let's go back to the top.

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1 H. SHIMMIN

2 This was sent by you on March 17, 2022,
3 correct?

4 A Yes.

5 Q It was sent by you from the
6 United States?

7 A Yes.

8 Q Okay. And it references an ID
9 number and a contributor name, correct?

10 A Yes.

11 Q Okay. At the time you sent this
12 letter, was Hane Street's account with
13 Shutterstock still open and live?

14 A I don't believe so. I forget
15 the exact date it was terminated.

16 Q Let's go look back briefly at
17 Exhibit 14. Now looking at this document,
18 does it refresh your recollection as to
19 when Shutterstock labeled this account as
20 fraudulent?

21 A -- September 11, 2021. So yes,
22 it was.

23 Q In fact, Ms. Patel identified
24 this Shutterstock contributor as a fraud
25 on February 11, 2021, correct?

1 H. SHIMMIN

2 A Yes.

3 Q Okay. And let's look at the
4 letter from you that's marked Exhibit 26.

5 MS. LACKMAN: I'm just going to
6 object to Exhibit 26 to the extent it's
7 missing any components. Parents,
8 children, attachments, or otherwise.
9 Including any cover email.

10 BY MR. BURROUGHS:

11 Q So what's the date of your
12 letter seen in Exhibit 26?

13 A 17 March 2022.

14 Q Okay. So you sent this letter
15 to your Shutterstock licensee more than a
16 year after Ms. Patel had labeled Hane
17 Street fraudulent, correct?

18 A Yes.

19 Q And at the time Ms. Patel
20 labeled Hane Street fraudulent, were all
21 of his photos deleted from Shutterstock's
22 server or platform?

23 MS. LACKMAN: Objection. Vague.

24 THE WITNESS: It was not available
25 for license.

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1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Okay. So let's scroll through
4 this letter. Do you indicate anywhere in
5 this letter that the photograph is no
6 longer available for license by
7 Shutterstock?

8 A No, because that's not the
9 purpose of this letter.

10 Q Okay. Do you advise this
11 licensee that Hane Street's account had
12 been declared fraudulent?

13 A No.

14 Q Do you advise this licensee that
15 there's federal litigation over this
16 photograph?

17 A No.

18 Q Okay. Is this the only one of
19 these letters that you sent to
20 Shutterstock licensees for the content at
21 issue in this case?

22 A I don't know.

23 Q Is there any reason why you
24 didn't advise this licensee of the issues
25 with Shutterstock's right to license the

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1 H. SHIMMIN

2 photo?

3 A Because it's not pertinent for
4 what the client was asking for.

5 Q What was the client asking for?

6 A Just a document that they had
7 licensed the image.

8 Q In fact, didn't the client
9 advise you that Dr. McGucken had made a
10 claim over that photograph and was
11 reaching out to you to ask whether that
12 claim was valid?

13 MS. LACKMAN: Objection. No
14 foundation. Failure to include the
15 relevant communications. Harassing.

16 THE WITNESS: -- I don't recall every
17 single request I receive. So. Happy to
18 answer --

19 BY MR. BURROUGHS:

20 Q I'm sorry, can you state the
21 last thing you said one more time?

22 A I said I don't recall the reason
23 for every single letter I create, so if
24 you can show me the request, I'll be happy
25 to comment on it.

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1 H. SHIMMIN

2 Q Okay. Did you have any reason
3 to conceal from this licensee the fact
4 that there was litigation over your right
5 to license this photograph?

6 MS. LACKMAN: Objection.

7 Mischaracterizes the document. Harassing.

8 BY MR. BURROUGHS:

9 Q Go ahead.

10 MS. LACKMAN: -- testifying -- no
11 foundation.

12 THE WITNESS: Well, one, we haven't
13 established the fact that I knew there was
14 an issue when I issued the letter, so.

15 BY MR. BURROUGHS:

16 Q Did you know there was an issue?

17 A I told you. I don't remember.

18 Q Okay. Did you look to see
19 before sending this letter whether there
20 was an issue?

21 A We don't really have a database
22 of where we're being sued. So --

23 MS. LACKMAN: I'm going to continue
24 to object on the grounds that this
25 document is incomplete, doesn't include

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1 H. SHIMMIN

2 the whole thread, and you're asking a
3 witness about a particular communication
4 which is incomplete. So this whole line
5 of testimony is invalid. If you want to
6 show her the communication that this
7 responds to, I think you can, and you
8 should. Otherwise, I'll just object to
9 this whole line of testimony.

10 MR. BURROUGHS: Are you finished, or
11 you have more?

12 MS. LACKMAN: Carry on.

13 BY MR. BURROUGHS:

14 Q But you did have a database at
15 this time that indicated that this
16 particular contributor's account had been
17 terminated, correct?

18 A Yes, but that doesn't mean that
19 we're being sued.

20 Q And you did have a database that
21 indicated that Shutterstock had removed
22 this photograph at least from its
23 availability for licensing, correct?

24 A Yes.

25 Q Did you look at either of those

1 H. SHIMMIN

2 database before writing this letter to
3 your licensee?

4 A Yes, but that's not the purpose
5 of this letter.

6 Q Okay. What's the purpose of
7 this letter?

8 A I already answered that.

9 MS. LACKMAN: You can answered it
10 again. Objection, asked and answered, but
11 you can answer it again.

12 THE WITNESS: It's to provide the
13 client with a letter saying that they
14 licensed this letter -- they licensed the
15 image.

16 BY MR. BURROUGHS:

17 Q Would it surprise you to learn
18 that multiple Shutterstock licensees have
19 indicated that they contacted Shutterstock
20 about the dispute over the photographs and
21 were advised that there was no issue with
22 the licenses?

23 MS. LACKMAN: Objection. Calls for
24 speculation. No foundation.

25 THE WITNESS: This letter does not

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1 H. SHIMMIN

2 state that there's not an issue. It is
3 simply stating that the client licensed
4 the image.

5 BY MR. BURROUGHS:

6 Q Okay. Would it surprise you to
7 learn that other folks had that same
8 experience, where after receiving notice
9 of the infringement from the photographer
10 or his lawyer, they contacted Shutterstock
11 and were advised that there was no issue?

12 MS. LACKMAN: Same objection. No
13 foundation. And if you've got these
14 documents, Scott, you've got to produce
15 them.

16 BY MR. BURROUGHS:

17 Q Go ahead.

18 A I'm not going to comment,
19 because we didn't advise through this
20 email or through this letter that there
21 was not an issue. All we did is stating
22 the fact that the client had licensed this
23 content.

24 Q So is it fair to say that it's
25 Shutterstock's position that it never

1 H. SHIMMIN

2 advised any of its licensees that no issue
3 existed in regard to Dr. McGucken's claims
4 of copyright?

5 MS. LACKMAN: Objection. Vague.

6 THE WITNESS: No. Kill notices were
7 issued, which we discussed.

8 BY MR. BURROUGHS:

9 Q Okay. Other than those kill
10 notices, did Shutterstock ever respond to
11 one of these inquiries and advise the
12 licensee that there was an issue with the
13 license?

14 MS. LACKMAN: Same series of
15 objections. Have you laid a foundation
16 that anyone ever asked?

17 BY MR. BURROUGHS:

18 Q Go ahead.

19 A I can't remember specifically.
20 You'll have to produce something and let
21 me look at it.

22 Q Okay. Do you remember generally
23 anything like that happening?

24 A I just said no.

25 Q Okay. Has Active Times made any

1 H. SHIMMIN

2 claim against Shutterstock for issuing to
3 them a false license?

4 MS. LACKMAN: Objection. Foundation.
5 Vague.

6 THE WITNESS: Not to my knowledge.

7 BY MR. BURROUGHS:

8 Q Have you provided copies of the
9 kill notices to your attorneys?

10 A I was not part of the document
11 collection process --

12 Q Do you know if any --

13 A I don't know -- I was not
14 involved with the process.

15 Q Do you know if anyone at
16 Shutterstock produced the kill notices to
17 your attorneys?

18 MS. LACKMAN: Objection. Outside the
19 scope.

20 THE WITNESS: I wasn't part of the
21 process, so I personally did not, and I
22 don't know. I'm sure whatever was
23 requested was given.

24 BY MR. BURROUGHS:

25 Q Okay. I'm going to put a

1 H. SHIMMIN

2 document in front of you that we're going
3 to mark as Exhibit 27. It's STK 6268.

4 Are you familiar with this document?

5 (Exhibit 27 was marked for
6 identification.)

7 A I don't think so. Could you
8 expand the first column a little bit --
9 I'm not sure what I'm looking at. I'm not
10 sure what this is. I haven't seen it
11 before.

12 MS. LACKMAN: I'll just object to the
13 way it's displayed.

14 BY MR. BURROUGHS:

15 Q In reviewing the contents of it,
16 does it indicate to you that this is a
17 chart of the dates that the, quote-
18 unquote, "Kill notices," were sent?

19 A It's possible. I'm not familiar
20 at all with this report that's been
21 generated, so I don't know.

22 Q Okay. So you have no basis to
23 testify about this report, correct?

24 A I do not.

25 Q Let's take it down. We're going

1 H. SHIMMIN

2 to put an exhibit in front of you. We'll
3 mark it Exhibit 28. This is STK 1144 to
4 1151. Do you recognize this document?
5 We'll scroll all the way to the bottom so
6 you can see the entirety.

7 (Exhibit 28 was marked for
8 identification.)

9 A I believe I've seen this once.

10 Q Okay. What is this document and
11 how do you recognize it?

12 A It appears to be a report from
13 Google Analytics.

14 Q Okay, and do you know what this
15 report reflects?

16 A Well, since I don't work on the
17 team I'm guessing, but basically it looks
18 like it's a URL and how many views, how
19 long it's been, how many page views, the
20 duration of time spent looking at that
21 URL.

22 Q And does this reflect the time
23 period January 1, 2020, to December 31,
24 2020?

25 A Yes.

1 H. SHIMMIN

2 Q Okay. And this doesn't reflect
3 the views for the photos at issue in this
4 case, it reflects the views for the URLs
5 that you see in the first column, correct?

6 A It could be. I don't work at
7 all with Google Analytics, so I don't have
8 any sort of insight on what we're looking
9 at.

10 Q Okay, so you don't have any
11 basis to testify about this document,
12 correct?

13 MS. LACKMAN: Objection. Misstates
14 the testimony.

15 THE WITNESS: I have nothing to say
16 about this document.

17 BY MR. BURROUGHS:

18 Q Okay. Have you seen it before
19 today, this document?

20 MS. LACKMAN: Objection. Asked and
21 answered.

22 THE WITNESS: I've seen it once.
23 It's not something --

24 BY MR. BURROUGHS:

25 Q Did your attorney show it to

1 H. SHIMMIN

2 you?

3 MS. LACKMAN: You can answer.

4 THE WITNESS: Yes.

5 BY MR. BURROUGHS:

6 Q Okay. So if I were to ask you
7 questions about how this document was
8 created or what it reflects, you'd be
9 guessing as to those things, correct?

10 MS. LACKMAN: Objection. Misstates
11 the testimony that's already been
12 provided.

13 THE WITNESS: No, I have no knowledge
14 about how this is created.

15 BY MR. BURROUGHS:

16 Q Okay. And you have no knowledge
17 about how the data that is reflected
18 relates to the works at issue in this
19 case, correct?

20 MS. LACKMAN: Objection --

21 THE WITNESS: I do not. Sorry --

22 MS. LACKMAN: Yeah, no, just
23 objection. Misstates the prior testimony.

24 BY MR. BURROUGHS:

25 Q I'll put a document in front of

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1 H. SHIMMIN

2 you we'll mark as Exhibit 29. It's STK
3 1381. Are you familiar with this
4 document?

5 (Exhibit 29 was marked for
6 identification.)

7 A It appears to be part of the
8 takedown request for the thumbnails on
9 Jira.

10 THE REPORTER: What was the part?

11 THE WITNESS: Takedown request on
12 Jira. J-I-R-A, it's a system that we use
13 to create tickets.

14 BY MR. BURROUGHS:

15 Q Does it indicate on here who
16 requested that these images be removed?

17 A Yes. The reporter is Andrew
18 Raff.

19 Q Okay. And who's Mr. Raff?

20 A He is my boss.

21 Q Okay. What's his role, or
22 what's his title?

23 A Assistant general counsel.

24 Q What's his role?

25 A He looks over privacy matters as

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2 well as IP and litigation.

3 Q Okay. So would you be able to
4 provide testimony about what some of the
5 language in this document means, such as,
6 "Public image takedown request - INADB"?

7 MS. LACKMAN: I'll just object. This
8 is outside the scope.

9 THE WITNESS: No, I would not be able
10 to identify what that is.

11 BY MR. BURROUGHS:

12 Q Does this document, to your
13 knowledge, reflect Shutterstock's removal
14 of certain of the designs at issue in this
15 case?

16 A It reflects that the ticket was
17 created. As far as how the engineering
18 team's work on tickets and closed tickets,
19 I'm not a part of that, so I don't know.

20 Q Okay. So you wouldn't be able
21 to testify about how Shutterstock removed
22 the photographs at issue in this case,
23 correct?

24 A No.

25 Q Is that correct?

1 H. SHIMMIN

2 A No, I would not be able to
3 answer that question.

4 Q Okay. I'll put a document in
5 front of you that we're going to mark as
6 Exhibit 30, STK 5331. I'll scroll to the
7 bottom and let you review this document.

8 (Exhibit 30 was marked for
9 identification.)

10 MS. LACKMAN: I'll say again that
11 this is outside the scope. There's no
12 reference to EXIF data or anything along
13 those lines in the 30(b)(6) notice.

14 BY MR. BURROUGHS:

15 Q Do you recognize this document
16 or any of the data?

17 A I do not. It does not look
18 familiar to me.

19 Q Looking in column D, "EXIF key,"
20 does any of that refer to or appear to you
21 to refer to categories of EXIF data?

22 A It does not, but I've never seen
23 this before, so I don't really have
24 anything to say for sure.

25 Q Okay. I'm going to put a

1 H. SHIMMIN

2 document in front of you we're going to
3 mark as Exhibit 31. It's STK 1396. Does
4 the URL w3.org mean anything to you?

5 (Exhibit 31 was marked for
6 identification.)

7 A It does not.

8 Q Does any of the text, and we'll
9 scroll through here, mean anything to you?

10 A No, not -- I'm not sure what
11 we're looking at.

12 Q Okay. Pull that down. I'm
13 going to mark another exhibit. It appears
14 to me to be a website printout, but I want
15 you to take a look at it. I believe it's
16 from Hello RF. Have you seen this image
17 before?

18 (Exhibit 32 was marked for
19 identification.)

20 MS. LACKMAN: Objection. We've said
21 this is a document not produced for the
22 case -- don't even know what it is. No
23 foundation. Witness couldn't be prepared
24 on that for a 30(b)(6) deposition.

25 THE WITNESS: Maybe. I can't

1 H. SHIMMIN

2 definitively say that I've seen this
3 specific image before.

4 BY MR. BURROUGHS:

5 Q Okay. Will you scroll down to
6 the bottom of the page? Do you recognize
7 that URL, hellorimage.zcool.cn?

8 A It looks like it's coming from
9 their website.

10 Q Okay, from ZCool's website?

11 A Yes.

12 Q Do you recognize the numerical
13 string starting with 213749?

14 A It's most likely the asset ID
15 number.

16 Q From Shutterstock?

17 A Yes.

18 MS. LACKMAN: Objection, vague.

19 BY MR. BURROUGHS:

20 Q Okay. And if you scroll to the
21 top of the page, you'll see that number
22 again .jpg. Does that also appear to be
23 the Shutterstock asset ID number for this
24 photograph? Or image ID number from
25 Shutterstock for this photograph?

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2 A I can't say. It is an asset ID
3 number. I don't know if it's the one from
4 Shutterstock. I don't have it memorized.

5 Q Okay. And do you know why this
6 website would have been displaying this
7 Shutterstock asset as of yesterday,
8 September 19, 2022?

9 MS. LACKMAN: Objection. No
10 foundation. No foundation on a few
11 levels. Calls for speculation.

12 BY MR. BURROUGHS:

13 Q Go ahead.

14 A No. I don't know why.

15 Q Okay. Do you know if any of the
16 other Shutterstock images at issue in this
17 case are up on Hello RF even today, and
18 visible to the public?

19 MS. LACKMAN: Objection to, "Images."
20 Vague. Calls for speculation.

21 THE WITNESS: I do not know.

22 BY MR. BURROUGHS:

23 Q Okay. We're going to put
24 another exhibit in front of you. I
25 believe it's also a page from Hello RF.

1 H. SHIMMIN

2 We're going to mark it next in line, which
3 I believe will be Exhibit 32? The prior
4 was Exhibit 31?

5 (Exhibit 33 was marked for
6 identification.)

7 THE REPORTER: 33.

8 BY MR. BURROUGHS:

9 Q This is 33. So we'll mark this
10 Exhibit 33. Again, at the top, you see
11 the date, September 19, 2022, and the
12 numerical identifier 2143744585?

13 A Yes.

14 MS. LACKMAN: Same objection as
15 before regarding surprise exhibits -- by
16 your office that have not been produced.

17 BY MR. BURROUGHS:

18 Q Okay. You can scroll to the
19 bottom. And do you recognize that URL,
20 hellorfimg.zcool?

21 MS. LACKMAN: Objection. Vague.
22 Mischaracterizes the document.

23 THE WITNESS: Well, in fairness, I'm
24 not familiar with that prefix. That
25 subdomain of .zcool. So I can't verify

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2 whether or not this is from ZCool's site
3 or not.

4 BY MR. BURROUGHS:

5 Q Okay. And is this ZCool the
6 authorized reseller you mentioned earlier,
7 or one of the Shutterstock resellers you
8 mentioned earlier?

9 A It is --

10 MS. LACKMAN: Objection. Calls for
11 speculation.

12 MR. BURROUGHS: You got the response,
13 Madam Court Reporter?

14 THE REPORTER: She said, "It is."

15 BY MR. BURROUGHS:

16 Q Okay. All right. I'm going to
17 put another document in front of you.
18 Raza 76. I want you to take a look at
19 this. Tell me if you've seen it before.
20 We'll mark this as Exhibit 34. Do you
21 recognize this document?

22 (Exhibit 34 was marked for
23 identification.)

24 MS. LACKMAN: Can you please scroll
25 down and show me the Bates number showing

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2 you produced this in discovery?

3 BY MR. BURROUGHS:

4 Q Just take a moment to look at
5 the document and tell us if you recognize
6 it.

7 MS. LACKMAN: Okay. No, it wasn't.
8 Same thing. Witness was not prepared to
9 talk about a document that is not
10 authenticated. We don't know what it is.
11 It's not even authenticated by your side.
12 So --

13 BY MR. BURROUGHS:

14 Q If you want us to go slower or
15 faster, let us know and we'll scroll down
16 or speed up.

17 A I have not seen this document
18 before.

19 Q Okay. Are you familiar with
20 this site Hello RF?

21 A I know they are an authorized
22 reseller in China. I don't believe I've
23 ever visited their site.

24 Q Okay. Do you know why they're
25 still offering some of the photographs at

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1 H. SHIMMIN

2 issue in this case that were on
3 Shutterstock's site?

4 MS. LACKMAN: Objection. Calls for
5 speculation. No foundation.
6 Mischaracterizes the document.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A No, I don't.

10 Q Okay. And like the others,
11 Shutterstock hasn't contacted Hello RF to
12 ensure that they've removed the photos at
13 issue in this case from their site,
14 correct?

15 MS. LACKMAN: Objection.
16 Mischaracterizes the testimony,
17 mischaracterizes the document.
18 Mischaracterizes Shutterstock's processes
19 and procedures.

20 BY MR. BURROUGHS:

21 Q Go ahead.

22 A It's access through the API. So
23 if it's not available on Shutterstock, it
24 won't be available for license at Hello RF
25 or any of the other authorized resellers.

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2 Q Okay. But it's still apparently
3 available to be displayed, correct?

4 MS. LACKMAN: Objection. Misstates
5 the document. Misstates the testimony.
6 No foundation.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A I don't know.

10 Q Okay. And my question was, has
11 Shutterstock reached out to Hello RF to
12 ensure that it's no longer displaying the
13 photographs at issue in this case?

14 MS. LACKMAN: Objection. That wasn't
15 your question. You can answer.

16 THE WITNESS: I have not, and I don't
17 know if anyone has.

18 BY MR. BURROUGHS:

19 Q Okay. Understood. Thank you.
20 I'm going to put up one more exhibit.
21 This will be Exhibit 35. I believe it's
22 the full page of your blog that we were
23 looking at earlier. You can scroll all
24 the way to the bottom. If you want us to
25 go slower or faster, you can feel free to

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2 tell us. Do you recognize the document?

3 (Exhibit 35 was marked for
4 identification.)

5 A Yes.

6 Q We were looking at a screen
7 capture earlier, but is this the full page
8 for that particular screen capture?

9 A It appears to be.

10 Q Okay. And if you scroll to the
11 bottom -- go up a little bit more. Little
12 bit more. Stop -- passed it. Do we see
13 that you're displaying the same
14 Shutterstock advertisement soliciting
15 folks to submit their images to
16 Shutterstock today, and then including
17 the, "Submit to Shutterstock," link?

18 MS. LACKMAN: Objection. This
19 document hasn't been produced to us. But
20 you can answer if you know.

21 THE WITNESS: Yes, I see it.

22 BY MR. BURROUGHS:

23 Q Okay. Did you have access to
24 your blog before today?

25 A Ever?

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1 H. SHIMMIN

2 Q Yeah. Ever? Okay. You could
3 have went to your blog this morning and
4 looked at this particular article, right?

5 A I did not.

6 Q Okay. Is there anything on your
7 blog, or have you noticed anything on your
8 blog that you no longer believe or that
9 you would change if you could?

10 A No, I don't look at it that
11 often, so I might -- nothing comes to
12 mind.

13 Q Okay. Have you ever gone back
14 and edited your blog or changed anything
15 because you changed your mind about
16 something in particular, legal or
17 otherwise?

18 A Nothing comes to mind.+

19 MR. BURROUGHS: I think I'm almost
20 finished. Let's go off the record for a
21 couple of minutes. I'll look at my notes
22 and hopefully we'll be done by 5:30.

23 THE REPORTER: All right. Off the
24 record at 5:19 p.m.

25 (Off the record.)

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2 THE REPORTER: Back on the record,
3 5:32 p.m.

4 BY MR. BURROUGHS:

5 Q All right. We're going to put a
6 document in front of you we're going to
7 mark as Exhibit 36. I'll give you a
8 moment to review this document. So you'll
9 see here that a company called American
10 Financing has indicated, to me, that
11 Shutterstock advised them that it has a
12 valid license for the image that AHA used
13 on its site, which is Shutterstock image
14 1714055374. And that Hane Street
15 contributed the image. Do you recall
16 Shutterstock doing that in March of 2022?

17 (Exhibit 36 was marked for
18 identification.)

19 MS. LACKMAN: Objection. Vague.

20 THE WITNESS: It appears that they
21 requested a license confirmation letter
22 and it was provided.

23 BY MR. BURROUGHS:

24 Q Okay. And this occurred in or
25 around March of 2022?

1 H. SHIMMIN

2 A Well, I wrote one on the 17th.
3 I don't know if that's the same one or
4 not, but I did make -- I did provide a
5 letter on March 17, 2022 --

6 Q And that was to a company named
7 Active Times, is that correct?

8 A I don't recall the name of the
9 company that asked for it.

10 MS. LACKMAN: Can you just scroll
11 down? Is there more to the exchange? It
12 looks like it's responding to something.
13 Okay. There's nothing more. It looks
14 like it's cut off --

15 BY MR. BURROUGHS:

16 Q -- Do you recall interacting
17 with this AHA company?

18 MS. LACKMAN: I have to object to
19 this document as incomplete. Sorry.
20 Carry on.

21 BY MR. BURROUGHS:

22 Q Scroll back to the top, please.

23 A I don't recall having
24 interactions specifically with this
25 company about this issue.

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2 Q In or around March of 2022, were
3 you assuring multiple Shutterstock
4 licensees that the Hane Street licenses or
5 the Hane Street photographs had no issue?

6 MS. LACKMAN: Objection.

7 Mischaracterizes the document shown
8 previously.

9 THE WITNESS: To be clear, the
10 license confirmation letter that we issued
11 was just to state that this licensee on
12 this date purchased this type of license.
13 It didn't -- wasn't the point of the
14 letter. It was just to confirm that a
15 license was issued.

16 BY MR. BURROUGHS:

17 Q Okay. Well, this Shutterstock
18 licensee is telling me that on March 23,
19 2022, that Shutterstock informed AHA that
20 it has a valid license for the image. Did
21 that happen?

22 MS. LACKMAN: Objection --

23 mischaracterizes the document. No
24 foundation.

25 //

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q -- Go ahead.

4 A -- I'm getting there. What Mr.
5 Ross is saying is that Shutterstock says
6 that they have a license -- they have a
7 valid license from Shutterstock. That
8 they have a license.

9 Q Okay. And in or around March
10 23, 2022, you did not advise Mr. Ross of
11 the issues with Hane Street or the
12 photographs at issue in this case,
13 correct?

14 MS. LACKMAN: Objection. Asked and
15 answered.

16 THE WITNESS: Not that I know of at
17 this time.

18 BY MR. BURROUGHS:

19 Q Okay. And does this refresh
20 your recollection as to when the kill
21 notices were sent?

22 A Kill notices were sent later.

23 Q Okay. So they were sent after
24 March of '22, correct?

25 A If I recall correctly, yes.

1 H. SHIMMIN

2 Q More than a year after you had
3 terminated Hane Street as a fraudulent
4 contributor, correct?

5 MS. LACKMAN: Objection. Foundation.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q I'm going to put another
9 document in front of you we're going to
10 mark as Exhibit 37. I want you to scroll
11 through this.

12 (Exhibit 37 was marked for
13 identification.)

14 MS. LACKMAN: Can you please slow
15 down? I don't see a Bates number on this.
16 Was this produced to us? No, it wasn't.
17 Okay. I'll just object to you introducing
18 this document, and I'm going to need some
19 time to read it.

20 MR. BURROUGHS: Take all the time you
21 need.

22 MS. LACKMAN: Well, since you've
23 torpedoed my meeting, I might as well.
24 Can you please scroll up to the top? Can
25 you please stop? I can't read that fast.

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2 Do you want me to read it out loud? I
3 mean, can you please scroll up? I don't
4 know why we don't just share documents
5 like -- okay.

6 MR. BURROUGHS: And just for the
7 record, we did produce this. I think it's
8 MGC 180 -- 182, 183, et cetera. So.

9 MS. LACKMAN: Where is the Bates
10 number on this one?

11 MR. BURROUGHS: I think this is an
12 unBatesed version, but this is in our
13 production.

14 MS. LACKMAN: Okay. Can you scroll
15 to the next page? Okay. Can you scroll
16 to the next page? All right. Heather, do
17 you need more time?

18 THE WITNESS: No, I think I'm okay.

19 BY MR. BURROUGHS:

20 Q All right. Scroll to the top.
21 Do you recall communicating with this
22 company?

23 A I don't recall.

24 Q Okay. Let's scroll down to the
25 second page. Stop. Do you recognize the

1 H. SHIMMIN

2 form of this email?

3 A No, because it doesn't come from
4 our team.

5 Q Okay. Is this one of the
6 Salesforce emails that you were
7 referencing earlier?

8 A The message came via Salesforce,
9 yes.

10 Q Okay. Do you know a Gabriel
11 that works at Shutterstock as a customer
12 care advocate?

13 A I do not know Gabriel.

14 Q Okay. And again, in March of
15 2022, Shutterstock's advising this
16 licensee of the terms of this license and
17 providing an invoice relevant to the
18 photography at issue in this case,
19 correct?

20 A Yes.

21 Q And again, Shutterstock, over a
22 year after it terminated Hane Street as a
23 fraudulent contributor and terminated the
24 other two contributors for the photographs
25 at issue at this case, don't make any

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1 H. SHIMMIN

2 mention of that to the licensee, correct?

3 MS. LACKMAN: Objection to the
4 characterization of the timing of the
5 termination of the -- all parties. Calls
6 for speculation.

7 THE WITNESS: Again, the request is
8 just to provide -- it's just asking for a
9 license confirmation.

10 BY MR. BURROUGHS:

11 Q Is there any other reason why
12 Shutterstock did not advise its licensee,
13 over a year after terminating Hane Street,
14 that there was an issue with this
15 photograph and this license?

16 MS. LACKMAN: Objection. Asked and
17 answered.

18 THE WITNESS: Yeah. The details --
19 my understanding comes from Counsel, but
20 in the past, we rarely sent out kill
21 notices.

22 BY MR. BURROUGHS:

23 Q Okay. So if Shutterstock is
24 aware that its licensees are displaying or
25 selling merchandise bearing a photograph

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1 H. SHIMMIN

2 that wasn't lawfully licensed,
3 Shutterstock doesn't have a policy for
4 contacting those licensees to ensure that
5 the infringement stops? Is that accurate?

6 MS. LACKMAN: Objection. No
7 foundation as to awareness. No foundation
8 as to unlawful. Asked and answered.

9 BY MR. BURROUGHS:

10 Q Go ahead.

11 A Usually the issues are resolved
12 with the rights holder, so there isn't an
13 issue -- there isn't a need to send out a
14 kill notice.

15 Q But if it isn't resolved with
16 the rights holder, there's no policy to
17 address it?

18 MS. LACKMAN: Objection. Misstates
19 testimony.

20 THE WITNESS: We do have a policy.

21 BY MR. BURROUGHS:

22 Q What's that?

23 A My understanding comes from Counsel
24 and I can't disclose it.

25 Q Are you refusing to provide the

1 H. SHIMMIN

2 policy relating to such notices?

3 A Yes.

4 Q Okay. Let's scroll down to the
5 next page. Do you recognize the form of
6 this document?

7 A I have not seen it before, but
8 it appears to be an invoiced receipt for a
9 customer.

10 Q Okay. And you see at the top
11 there it says you're impersonating
12 customer 106977454?

13 A Yes.

14 Q Is that what you were referring
15 to earlier, when you can log into somebody
16 else's account and impersonate them to
17 perform certain actions?

18 MS. LACKMAN: Objection. Misstates
19 testimony.

20 THE WITNESS: It is possible.

21 BY MR. BURROUGHS:

22 Q Okay. And was that done here,
23 given your review of this document?

24 A It appears to be.

25 Q Okay. Let's go back up to the

1 H. SHIMMIN
2 first page. Let's scroll down so we can
3 look at the body of the Karl Storz email.
4 So you see here that Karl Storz is
5 indicating they don't believe there to
6 have been any instance of copyright
7 infringement. Do you see that?

8 MS. LACKMAN: Objection.
9 Mischaracterizes the document. No
10 foundation for what Michael Loi thinks.
11 Calls for speculation.

12 THE WITNESS: I see where it says
13 that.

14 BY MR. BURROUGHS:

15 Q Do you know why your licensee
16 would believe that regarding your
17 Shutterstock license?

18 MS. LACKMAN: Calls for speculation.

19 THE WITNESS: Well, because they
20 purchased a license of this content
21 through Shutterstock.

22 BY MR. BURROUGHS:

23 Q Any other reason --

24 A -- reputable company, and people
25 trust us. Our customers trust us. Our

1 H. SHIMMIN

2 contributors trust us. So there's no
3 reason for him to think that there would
4 be an issue with the content he was
5 licensing.

6 Q Any other reason?

7 MS. LACKMAN: Same objection. Calls
8 for speculation as to his mental state.

9 THE WITNESS: Yeah, I don't know what
10 he was thinking that will speak from our
11 perspective.

12 BY MR. BURROUGHS:

13 Q And when Karl Storz referred the
14 cease and desist letter to you for
15 investigation and handling, what did you
16 do?

17 MS. LACKMAN: Objection.
18 Mischaracterizes the document.
19 Mischaracterizes the testimony.

20 THE WITNESS: -- produced the cease
21 and desist letter? I don't know what
22 you're referring to.

23 BY MR. BURROUGHS:

24 Q I'm referring to this letter
25 here where the licensee says they referred

1 H. SHIMMIN

2 your letter to Shutterstock for further
3 investigation and handling. Did that
4 happen?

5 MS. LACKMAN: Same objection. Is
6 there a letter dated March 10, 2022, on
7 the record?

8 THE WITNESS: It's possible.

9 BY MR. BURROUGHS:

10 Q And did Shutterstock do
11 anything, to your knowledge?

12 MS. LACKMAN: Objection. Vague.

13 THE WITNESS: If you can provide an
14 answer that we gave, I'll be happy to look
15 at it.

16 BY MR. BURROUGHS:

17 Q But to your knowledge, did
18 Shutterstock do anything?

19 A I can't say that without looking
20 at the response that we gave.

21 Q Did Shutterstock provide --

22 A I'm not the one that answers
23 inquiries that we get. So I didn't. I
24 don't recall. I can't say definitively if
25 any body did.

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2 Q So as you sit here today, you
3 don't know if anybody responded to this
4 referral, correct?

5 MS. LACKMAN: Objection. Outside the
6 scope. You've got documents you want to
7 show, then show them. If you don't want
8 good testimony, then you don't have to.
9 It calls for speculation.

10 BY MR. BURROUGHS:

11 Q Go ahead.

12 A What she said. I can't respond
13 without seeing a document to comment on.

14 Q Based on the statement from your
15 licensee saying they referred a letter to
16 you for further investigation and
17 handling, do you know if anyone at
18 Shutterstock did any investigation or
19 handling?

20 A It's possible. Show me that we
21 received a letter from them.

22 Q Other than that, do you know if
23 anyone did anything?

24 A I can't confirm that we even
25 received a letter from Karl.

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2 Q Okay. So as far as you know,
3 Karl did not provide a letter, and you did
4 not do any further investigation and
5 handling, correct?

6 MS. LACKMAN: Objection. Misstates
7 the testimony. Outside the scope. Asked
8 and answered. Harassing. Enough, Scott.
9 You've got your answers.

10 BY MR. BURROUGHS:

11 Q Go ahead.

12 A I didn't. I don't know. I'm
13 not going to answer any more. I'm sorry.
14 This is too much.

15 Q Okay. We're going to put
16 another document in front of you that
17 we'll mark as Exhibit 38.

18 (Exhibit 38 was marked for
19 identification.)

20 MS. LACKMAN: Are these your cleanup
21 questions, Scott? How many more hours of
22 cleanup do you have, so that I can advise
23 my colleague that I'm not going to be able
24 to join this meeting at all.

25 //

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1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Give us one moment here. We'll
4 put the exhibit up. Do you recognize this
5 document?

6 MS. LACKMAN: Can you please scroll
7 down?

8 BY MR. BURROUGHS:

9 Q Take all the time you need. Let
10 us know when you're done reviewing it.

11 MS. LACKMAN: I just want to see if
12 it's got a number on it. Okay.

13 THE WITNESS: Yes.

14 BY MR. BURROUGHS:

15 Q What is this document and how do
16 you recognize it?

17 MS. LACKMAN: Objection -- you can
18 answer.

19 THE WITNESS: I'm sorry.

20 MS. LACKMAN: Go ahead. I just said
21 a compound question. You can answer.

22 THE WITNESS: This is a kill notice.

23 BY MR. BURROUGHS:

24 Q Okay. Is this one of the kill
25 notices you referenced earlier today?

1 H. SHIMMIN

2 A Yes, it appears to be for one of
3 the issues -- images at issue.

4 Q And do you know which licensee
5 this is to?

6 MS. LACKMAN: Objection. Vague.

7 THE WITNESS: It's addressed to a
8 Natalie Stephan.

9 BY MR. BURROUGHS:

10 Q Okay. And is this one of the
11 kill notices that you wrote?

12 A No.

13 Q Do you know who wrote this?

14 A I believe it was Andrew.

15 Q Can you give us that full name?

16 A Raff.

17 Q Can you spell that for us?

18 A A-N-D-R-E-W R-A-F-F.

19 Q And are you referring to a
20 specific Shutterstock image ID in this
21 letter?

22 A Yes. It's listed three times.

23 Q Okay. And there's an indication
24 that the licensee should withdraw the
25 image and cease usage until the issue has

1 H. SHIMMIN

2 been resolved, correct?

3 A Yes.

4 Q Okay. And did you receive
5 any -- well, withdraw that question. Did
6 you send 938 of these to your licensees?

7 A I personally did not.

8 Q Did Shutterstock?

9 MS. LACKMAN: Objection. Asked and
10 answered.

11 THE WITNESS: Yes.

12 BY MR. BURROUGHS:

13 Q I'm sorry. I think you guys
14 were talking at the same time. What was
15 the answer?

16 A Yes.

17 Q And what's the date on this kill
18 notice?

19 A This is Friday, 3rd of June
20 2022.

21 Q Okay. So how long after you
22 terminated the Hane Street account for
23 being a fraudulent contributor did you
24 send these 900-plus kill notices?

25 A About a year and a bit.

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2 Q Okay. And why did you wait that
3 long to do so?

4 MS. LACKMAN: Objection. No
5 foundation. Calls for speculation. You
6 can answer.

7 THE WITNESS: Like I said, we don't
8 normally send kill notices. In this
9 instance, we felt it was appropriate.

10 BY MR. BURROUGHS:

11 Q Is there any other reason why
12 you waited so long to send the kill
13 notices to your licensees?

14 MS. LACKMAN: Objection.
15 Mischaracterizes the testimony.

16 THE WITNESS: We usually -- resolve
17 it with the rights holder and it's not
18 necessary.

19 BY MR. BURROUGHS:

20 Q Okay. Any other reason?

21 A My understanding comes from
22 Counsel. That's the reason I'm giving.

23 Q Okay. Any other reason?

24 A No.

25 Q Okay. And does waiting for more

1 H. SHIMMIN

2 than a year to send the kill notices to
3 your licensees comport with the relevant
4 Shutterstock policy?

5 MS. LACKMAN: Objection to the extent
6 it mischaracterizes the testimony,
7 mischaracterizes the facts.

8 THE WITNESS: I wouldn't say it's
9 against Shutterstock's quote-unquote,
10 "Policy," to wait to see if we can resolve
11 the issue.

12 BY MR. BURROUGHS:

13 Q Okay. So is it fair to say that
14 waiting for over a year after terminating
15 a contributor's account for being
16 fraudulent to contact licensees for that
17 contributor's photographs complies with
18 Shutterstock policy?

19 MS. LACKMAN: Objection. Asked and
20 answered.

21 THE WITNESS: It's not unusual.

22 BY MR. BURROUGHS:

23 Q Okay. So it happens from time
24 to time at Shutterstock?

25 MS. LACKMAN: Objection. Vague.

1 H. SHIMMIN

2 Objection, misstates the testimony.

3 THE WITNESS: Often it's not sent
4 because no licenses are issued. We've
5 resolved the issue. Customers aren't even
6 using the content anymore. There's many
7 many reasons why -- a kill notice would
8 not be issued.

9 BY MR. BURROUGHS:

10 Q So did the kill notices that you
11 sent in connection with the images in this
12 case comply with Shutterstock policy?

13 MS. LACKMAN: Objection. Asked and
14 answered. Harassing. Witness has
15 answered the question. I would suggest we
16 move on. You've already gone well over
17 your promised time. And so if, as you
18 said at the last break, 45 minutes ago,
19 you had a couple of cleanup questions.
20 You've now introduced three new exhibits,
21 multiples of which have not been produced
22 previously. I've been very patient with
23 this, but I certainly would be happy to
24 seek a ruling on this if you can't wrap it
25 up quickly.

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2 BY MR. BURROUGHS:

3 Q Do you remember the question?

4 A Asked and answered.

5 MS. LACKMAN: That's for me. Yes.

6 You've asked this ten different ways. I

7 know you don't like the answer to the

8 question, Scott, but you can't keep asking

9 the question hoping for a different

10 answer. That's why I keep objecting asked

11 and answered. I'm entitled to do that.

12 So again, the question's been answered.

13 BY MR. BURROUGHS:

14 Q Maybe there was an answer. I

15 didn't hear I because I think there was a

16 lot of colloquy from counsel --

17 MS. LACKMAN: Yeah -- it was answered

18 previously, and when you asked it again,

19 and I instructed the witness not to

20 answer, you're going to walk away and

21 start laughing? That's cute. How are you

22 doing, Scott? Where are you? Are you

23 ending the deposition, or are you going to

24 come back and -- move on --

25 //

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2 BY MR. BURROUGHS:

3 Q I guess I'll try to ask one more
4 time --

5 MS. LACKMAN: No -- I'm instructing
6 the witness not to answer.

7 BY MR. BURROUGHS:

8 Q Let me ask the question first
9 and then you can instruct. Did the
10 issuance of the kill notices relevant to
11 the photos at issue in this case comport
12 with Shutterstock policy?

13 MS. LACKMAN: You can answer that.

14 THE WITNESS: I can answer?

15 MS. LACKMAN: Yes.

16 THE WITNESS: It's not going to be
17 any different. It's not unusual to wait
18 because the issue can be resolved --

19 BY MR. BURROUGHS:

20 Q I'm not asking if it's unusual
21 to wait. I'm asking if it complied with
22 the policy or not.

23 MS. LACKMAN: Objection. Foundation.

24 THE WITNESS: It is not against the
25 policy.

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2 MR. BURROUGHS: I believe I'm
3 finished. Give me a second here to go
4 through my notes.

5 MS. LACKMAN: You already did that,
6 so I think we're good. I thought that's
7 what the last break was for. Or are we
8 going to get like five more exhibits from
9 your notes?

10 MR. BURROUGHS: Let's go off the
11 record for two or three minutes. We'll
12 come back on. I think I'll be done.

13 THE REPORTER: Off the record.

14 (Off the record.)

15 THE REPORTER: Back on the record,
16 6:01 p.m.

17 BY MR. BURROUGHS:

18 Q All right. So I'm going to put
19 one more document in front of you. This
20 is going to be Exhibit --

21 THE REPORTER: 39.

22 BY MR. BURROUGHS:

23 Q 39. I want you to take a look
24 at it and tell me if you've ever seen it.
25 Have you ever seen this document before?

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1 H. SHIMMIN

2 (Exhibit 39 was marked for
3 identification.)

4 A I don't believe I have.

5 Q Okay. And do you recall if Karl
6 Storz referred this letter to Shutterstock
7 for further investigation and review?

8 A He said he would contact
9 Shutterstock.

10 Q Do you recall if he did?

11 A Per our last conversation, no.

12 MR. BURROUGHS: Okay. All right.
13 I'm finished unless Ms. Lackman has any
14 questions. We can go off the record.

15 MS. LACKMAN: No, I don't have any
16 questions. So thanks everyone for your
17 time. Could I get just the time count on
18 this transcript?

19 THE REPORTER: Yes. Give me one
20 second -- how soon do you need the
21 transcript?

22 MR. BURROUGHS: Normal turnaround's
23 fine.

24 THE REPORTER: Okay. We're off the
25 record at 6:03 p.m.

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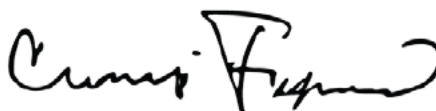
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H. SHIMMIN

(Signature reserved.)
(Whereupon, at 6:03 p.m., the
proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, CHANYRI FIGUEROA MONSANTO, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHANYRI FIGUEROA MONSANTO

Notary Public in and for the
State of New York

☒ [X] Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, RICHARD GOODNESS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



RICHARD GOODNESS

1 ELEANOR M. LACKMAN, ESQUIRE

2 eml@msk.com

3 October 4, 2022

4 RE: Elliot McGucken v. Shutterstock, Inc., Et Al

5 9/20/2022, Heather Shimmin (#5466687)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 (division email).

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

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Elliot McGucken v. Shutterstock, Inc., Et Al

Heather Shimmin (#5466687)

E R R A T A S H E E T

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REASON_____

Heather Shimmin

Date

Elliot McGucken v. Shutterstock, Inc., Et Al

Heather Shimmin (#5466687)

ACKNOWLEDGEMENT OF DEPONENT

I, Heather Shimmin, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Heather Shimmin

Date

*If notary is required

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_____ DAY OF _____, 20____.

NOTARY PUBLIC

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,

v.

Civil Action No.

SHUTTERSTOCK, INC., et al.

1:22-cv-00905-GHW

Defendants.

VIDEOCONFERENCE DEPOSITION OF HEATHER SHIMMIN IN HER
INDIVIDUAL CAPACITY AND AS 30(b)(6) CORPORATE
REPRESENTATIVE FOR SHUTTERSTOCK, INC.

DATE: Tuesday, September 20, 2022

TIME: 10:04 a.m.

LOCATION: Remote Proceeding
Queens, NY

REPORTED BY: Chanyri Figueroa Monsanto,
Notary Public

JOB NO.: 5466687

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF ELLIOT MCGUCKEN:

SCOTT ALAN BURROUGHS, ESQUIRE

(by videoconference)

Doniger Burroughs

603 Rose Avenue

Venice, CA 90291

scott@donigerlawfirm.com

ON BEHALF OF DEFENDANT SHUTTERSTOCK, INC. AND
HEATHER SHIMMIN:

ELEANOR M. LACKMAN, ESQUIRE

(by videoconference)

Mitchell Silberberg & Knupp LLP

437 Madison Avenue

25th Floor

New York, NY 10022

eml@msk.com

ALSO PRESENT:

Laura Zaharia, Esquire, Doniger Burroughs

(by videoconference)

Andrew Raff, Esquire, Shutterstock

(by videoconference)

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2 BY MR. BURROUGHS:

3 Q Did Shutterstock license Dr.
4 McGucken's photographs or the photographs
5 that he claims to own to third parties?

6 MS. LACKMAN: Objection. Calls for a
7 legal conclusion.

8 THE WITNESS: Some of his images were
9 licensed.

10 THE REPORTER: I'm sorry?

11 THE WITNESS: Oh, I'm sorry. Some of
12 his images were licensed -- of those
13 images were licensed.

14 BY MR. BURROUGHS:

15 Q And were they licensed by
16 Shutterstock to third parties?

17 MS. LACKMAN: Same objection. Calls
18 for a legal interpretation.

19 BY MR. BURROUGHS:

20 Q Go ahead.

21 A Yes.

22 Q And was Shutterstock paid for
23 those licenses?

24 MS. LACKMAN: Objection. Calls for
25 speculation.

1 H. SHIMMIN

2 would be a reason why.

3 Q And was the attachment that you
4 sent a confirmation of the license terms
5 between Shutterstock and this licensee?

6 MS. LACKMAN: Objection. Calls for a
7 legal interpretation. Mischaracterizes
8 the document.

9 THE WITNESS: It generally would talk
10 about high-level things permitted by
11 whatever the license type they purchased
12 on a high level.

13 BY MR. BURROUGHS:

14 Q And are the licenses directly
15 between Shutterstock and their licensees?

16 MS. LACKMAN: Objection. Vague.
17 Calls for legal interpretation.

18 THE WITNESS: Generally. There's
19 nuances, but generally it's between the
20 licensee and Shutterstock.

21 BY MR. BURROUGHS:

22 Q Okay. And so is it fair to say
23 that the attachment that you sent to this
24 licensee for the McGucken photograph
25 confirmed the terms of the license between

1 H. SHIMMIN

2 Shutterstock and the licensee?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. Documents not in evidence.
5 Calls for speculation.

6 BY MR. BURROUGHS:

7 Q Go ahead.

8 A I would say no, because the
9 terms of the license are between
10 Shutterstock and the licensees found in
11 the details of the actual licensing
12 agreement. So this is just a higher-
13 level, "Yes, they have this type of
14 license."

15 Q I see. So it's fair to say that
16 there is a licensing agreement between
17 Shutterstock and its licensees for the
18 McGucken photographs, correct?

19 MS. LACKMAN: Objection. Calls for
20 legal interpretation. Vague. Compound.
21 As to 900 or whatever, how many images
22 we're talking about in this case. You can
23 answer if you know.

24 THE WITNESS: I would just say
25 generally the terms of the license are

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1 H. SHIMMIN

2 found on the site, and this letter doesn't
3 necessarily go into the degree of what
4 that license is. It's just saying we have
5 a record that this client purchased a kind
6 of license or image.

7 BY MR. BURROUGHS:

8 Q And they purchased a license
9 from Shutterstock, correct?

10 MS. LACKMAN: Objection. Calls for
11 legal conclusion.

12 THE WITNESS: They got it through
13 Shutterstock, yes.

14 BY MR. BURROUGHS:

15 Q For the 930 licenses that you
16 mentioned, were all of those licenses
17 between Shutterstock and the licensee?

18 MS. LACKMAN: Objection. Asked and
19 answered. Calls for legal interpretation.
20 Vague.

21 THE WITNESS: Generally speaking, any
22 license would be between Shutterstock and
23 a licensee.

24 BY MR. BURROUGHS:

25 Q Okay. And for those 930

1 H. SHIMMIN

2 licenses, were the contracts or agreements
3 between Shutterstock and the licensee?

4 MS. LACKMAN: Same set of objections.
5 Compound.

6 THE WITNESS: I don't understand how
7 that differs from your previous question.

8 BY MR. BURROUGHS:

9 Q Before we were talking about the
10 license. Now I'm talking about the actual
11 contracts, the agreement.

12 MS. LACKMAN: Objection. Asked and
13 answered. What's the difference between a
14 contract and an agreement and a license?

15 BY MR. BURROUGHS:

16 Q Do you understand the question?

17 MS. LACKMAN: Calls for a legal
18 conclusion.

19 THE WITNESS: I understand what those
20 words mean. I'm not sure how you're
21 differentiating them between -- between
22 them.

23 BY MR. BURROUGHS:

24 Q I'm just trying to use the
25 language that you indicated. Earlier you

1 H. SHIMMIN

2 said there was an agreement between
3 Shutterstock and the licensee, correct?

4 MS. LACKMAN: Objection to the extent
5 that it misstates the testimony.

6 THE WITNESS: It was a licensing
7 agreement -- Shutterstock has, and
8 depending on which license a client gets,
9 a licensee gets, it will depend on the
10 type of license. So it varies, but yes,
11 there is an agreement between every client
12 who licenses an image and Shutterstock.

13 BY MR. BURROUGHS:

14 Q Okay. So is it fair to say that
15 for the 930 licensees for the McGucken
16 photographs, there was a licensing
17 agreement between Shutterstock and that
18 licensee?

19 MS. LACKMAN: Objection to the extent
20 it calls for legal interpretation.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q Okay. And were all of those
24 paid licenses?

25 A Can you define paid?

1 H. SHIMMIN

2 Q Well, let me ask. Does
3 Shutterstock request payment for licenses?

4 A Well, Shutterstock offers
5 sometimes images for free as part of our,
6 like an intro plan, for example. You
7 know, first five images free or whatever.
8 I do know some of those 930-odd images
9 were part of the free -- five images for
10 free or whatever. So Shutterstock did not
11 receive any payment for some of the
12 licenses.

13 Q But for the others it did
14 receive payment, is that correct?

15 A Yes. I don't know the exact
16 number, some Shutterstock did not and some
17 Shutterstock did.

18 Q And why did Shutterstock offer
19 the free images?

20 MS. LACKMAN: Objection to the extent
21 it calls for speculation. Outside the
22 scope.

23 THE WITNESS: It's like any other
24 company would have a promo. You know, buy
25 one get one free. It's a way to acquire

1 H. SHIMMIN

2 customers.

3 BY MR. BURROUGHS:

4 Q And when a customer signs up for
5 the five photograph free program, do they
6 provide a credit card number at that time?

7 MS. LACKMAN: Objection. Calls for
8 speculation.

9 THE WITNESS: I believe so. I don't
10 know the details of the various programs,
11 but in order to be a customer and create
12 an account, I believe one's credit card
13 information is required.

14 BY MR. BURROUGHS:

15 Q Do you have any of your
16 photographs on Shutterstock personally?

17 A I do.

18 Q Have you ever received payment
19 from Shutterstock personally?

20 A Yes.

21 Q Okay. Do you encourage other
22 photographs that you know in the community
23 to join Shutterstock?

24 A I do.

25 Q Okay. And have you written a

1 H. SHIMMIN

2 number of articles about Shutterstock and
3 the benefits of its services?

4 A I have.

5 MS. LACKMAN: -- to the extent it
6 mischaracterizes the material.

7 THE REPORTER: Sorry, I missed the
8 first --

9 MS. LACKMAN: Sorry. I said,
10 objection to the extent it
11 mischaracterizes the material.

12 BY MR. BURROUGHS:

13 Q So is it fair to say that
14 Shutterstock actively seeks contributors?

15 MS. LACKMAN: Objection. Vague.
16 Very vague. Also you are asking -- was
17 the prior question in her personal
18 capacity or in the corporate capacity?
19 Because otherwise the prior question was
20 outside the scope.

21 BY MR. BURROUGHS:

22 Q Go ahead.

23 A So in this instance are you
24 asking me as a corporate person --

25 Q Yes. Remember, I'll include,

1 H. SHIMMIN

2 "Personally," or, "In your personal
3 capacity," if I'm asking personally.
4 Otherwise, I'm always asking you on behalf
5 of the company.

6 A All right. Just wanted to
7 clarify. So, I mean, Shutterstock doesn't
8 quote-unquote, "Actively," go out
9 recruiting contributors.

10 Q What does Shutterstock do to
11 find or solicit contributors?

12 MS. LACKMAN: Objection. No
13 foundation.

14 THE WITNESS: I'm not in the
15 marketing department. I don't know
16 specifically, but a lot of it is
17 referrals.

18 BY MR. BURROUGHS:

19 Q Anything else?

20 A Probably but not specifically
21 that I know.

22 Q Do you know anything else
23 generally?

24 A I mean, there's widgets one can
25 add to their blog to get a referral fee if

1 H. SHIMMIN

2 a contributor signs up, so it's more, you
3 know, I think a great deal comes from
4 contributors just having a friend sign up
5 or spreading the word. To my knowledge,
6 Shutterstock does not actively run
7 campaigns to recruit artists.

8 Q Okay. So is it fair to say that
9 Shutterstock will pay its contributors to
10 refer other contributors?

11 MS. LACKMAN: Objection. Vague.

12 THE WITNESS: No. It's a referral
13 when -- if someone signs up, whoever
14 refers this new contributor gets two cents
15 for every image that's sold by this new
16 recruit for two years. So not paying per
17 se, it's more of a referral on downloads
18 that the new recruit would generate.

19 BY MR. BURROUGHS:

20 Q I see. So is it fair to say
21 that Shutterstock will pay an ongoing
22 percentage of the referee's income to the
23 referring individual?

24 MS. LACKMAN: Objection. Misstates
25 the testimony.

1 H. SHIMMIN

2 THE WITNESS: No. They would get a
3 royalty every time one of their recruits'
4 image was licensed. It's not necessarily
5 an ongoing -- it depends on if the images
6 are downloaded by the new recruit, as it
7 were.

8 BY MR. BURROUGHS:

9 Q Okay. Understood. So, for
10 example, if I was a contributor for
11 Shutterstock and I referred Ms. Zaharia,
12 and she became a contributor at
13 Shutterstock, Shutterstock would pay me a
14 portion of the moneys that Shutterstock
15 derived from Ms. Zaharia's photography, is
16 that accurate?

17 MS. LACKMAN: Objection to the extent
18 it misstates the testimony.

19 THE WITNESS: I mean, if Ms. Zaharia
20 had five of her images licensed this year,
21 you would get ten cents, essentially.

22 BY MR. BURROUGHS:

23 Q So it's fair to say that
24 Shutterstock would pay me a percentage of
25 the income derived from Ms. Zaharia's

1 H. SHIMMIN

2 work, correct?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. No testimony as to
5 percentage.

6 THE WITNESS: No, it's a flat rate of
7 two cents per image -- I mean, per
8 license.

9 BY MR. BURROUGHS:

10 Q Thank you for the correction.
11 So it's fair to say that Shutterstock
12 would pay me a flat rate for any money
13 that Shutterstock made from Ms. Zaharia's
14 photography, correct?

15 MS. LACKMAN: Objection to the extent
16 it misstates the testimony.

17 THE WITNESS: No. You would only
18 receive two cents per license that Ms.
19 Zaharia received.

20 BY MR. BURROUGHS:

21 Q Understood. Thank you for that.
22 Does Shutterstock run advertisements
23 seeking contributors?

24 MS. LACKMAN: Objection. Vague.
25 Asked and answered.

1 H. SHIMMIN

2 it'll be clear whether or not it's

3 30(b)(6) or not --

4 BY MR. BURROUGHS:

5 Q Ms. Shimmin, have you seen this
6 before?

7 A Yes, I've seen it before.

8 Q Okay. So is this your personal
9 website?

10 A Yes.

11 Q Okay. And is this the blog on
12 your personal website?

13 A Yes.

14 Q Okay. And is this a blog post
15 entitled, "How to Submit Your Photos to
16 Shutterstock"?

17 A Yes.

18 Q Okay. Did you create this blog
19 post within the job obligations that you
20 have at Shutterstock, or was this done
21 personally outside of work?

22 A This was a personal, outside of
23 work, not related to work project.

24 Q Okay. And you see on the right
25 side of the screen, "Submit your images to

1 H. SHIMMIN

2 Shutterstock today"?

3 A Yes.

4 Q Now is that an advertisement to
5 solicit Shutterstock contributors?

6 A Yeah. This was part of what I
7 mentioned before. You can -- contributors
8 will get a referral fee, so I added this
9 code to my widget on the side. To
10 encourage people to sign up to be a
11 contributor.

12 Q Okay. So is it fair to say that
13 one of the ways that Shutterstock solicits
14 contributors is through the advertisement
15 that we see in Exhibit 1?

16 MS. LACKMAN: Objection. Misstates
17 the testimony. I also want to interpose
18 an objection as to this as a document. It
19 appears to be just a screenshot.

20 BY MR. BURROUGHS:

21 Q Go ahead.

22 A Well, I would say Shutterstock
23 makes it available to contributors. I did
24 this on my own. Shutterstock didn't tell
25 me to do it, just to clarify. It's an

1 H. SHIMMIN

2 MS. LACKMAN: Objection --

3 THE WITNESS: Yeah.

4 MS. LACKMAN: Objection. The term,
5 "Solicited." No foundation.

6 BY MR. BURROUGHS:

7 Q And once the other artists
8 submit the content to Shutterstock, what
9 does Shutterstock do with it?

10 MS. LACKMAN: Objection. Vague.

11 THE WITNESS: Generally, because it
12 is a vague question, the artist submits
13 the content to review. It goes through a
14 review process. And it's either rejected
15 or it's put on the site to be licensed.

16 BY MR. BURROUGHS:

17 Q Okay. Can you walk me through
18 the review process?

19 A Sure. Do you want the
20 perspective of the contributor or the
21 reviewer?

22 A First let's do the contributor.

23 Q Sure. So a contributor logs
24 into his portal, as it were. Uploads
25 images -- we'll stick with images.

H. SHIMMIN

There's two places where they can add information. There's a description, which is also the title of the image. And then there are keywords, and a contributor can add up to 50 keywords. Then there's categories, up to two that a contributor can choose from. Optional is a location. And then there's a tick box whether this is submitted for commercial or editorial use. There's two fields if they need to submit a model or a property release. I believe that's it.

And so once the contributor does all this, they hit submit, and it goes off to review. And then the contributor waits. They'll receive an email once their content has been reviewed. It's automatically generated as, "Congratulations, all ten of your images were approved," or, "Sorry, it was rejected of this reason," and then they'll list the specific reasons. And if it's fixable, the contributor can resubmit the content. If they forgot the model

1 H. SHIMMIN

2 release, for example, the contributor can
3 re-submit the image with the attached
4 model release, for example.

5 Q And what are those reasons that
6 you mentioned?

7 MS. LACKMAN: Objection. Vague.

8 THE WITNESS: Shutterstock has
9 various rejection reasons. Some apply to
10 the quality of the image, so it could be
11 focus, noise. That sort of thing. And
12 then there were, let's say compliance
13 reasons such as, you know, lacking a model
14 release, if it was an identifiable person.
15 Maybe there's a physical trademark on
16 something that was submitted for
17 commercial use.

18 BY MR. BURROUGHS:

19 Q Okay. Any other reasons?

20 A Yeah, I mean there's -- there's
21 more. Intellectual property is a
22 rejection reason. You know, previously
23 submitted, or you've already submitted a
24 similar image in your portfolio that
25 exists already. There's probably about

1 H. SHIMMIN

2 30-odd rejection reasons.

3 Q And are those 30-odd rejection
4 reasons set forth in a guideline?

5 A Yes.

6 Q Okay. Will Shutterstock reject
7 a photo because they think no one will
8 license it?

9 MS. LACKMAN: Objection. Calls for
10 speculation. Outside of scope.

11 THE WITNESS: No. Shutterstock does
12 not approve or reject based on perceived
13 commercial value. That's not one of the
14 criteria.

15 BY MR. BURROUGHS:

16 Q Will Shutterstock reject a photo
17 because it's not high-quality?

18 MS. LACKMAN: Objection, vague.

19 THE WITNESS: There's several quality
20 reasons that are looked at. One is a
21 minimum file size, and if it doesn't meet
22 the minimum it's automatically rejected.
23 But if it's grainy or it's noisy or it's
24 out of focus it will be rejected for
25 quality issues.

1 H. SHIMMIN

2 THE WITNESS: I'm saying Shutterstock
3 will not reject an image if it's not --
4 will not only accept perfect images. It
5 doesn't have to be perfect to be accepted.
6 I guess that's what I mean to say.

7 THE REPORTER: What was the last
8 part?

9 THE WITNESS: It doesn't have to be
10 perfect in order to be accepted.

11 BY MR. BURROUGHS:

12 Q And why would Shutterstock
13 accept photos that weren't perfect?

14 MS. LACKMAN: Objection. Asked and
15 answered. Calls for speculation.
16 Misstates the testimony.

17 THE WITNESS: There's many reasons.
18 One is, there's no way to predict what a
19 customer is looking for. Perfection might
20 not be the most important thing. Another
21 reason might be it's a hard shot to get.
22 So maybe slightly out of focus is
23 acceptable in the instance where it was a
24 really unique shot, for example.

25 //

1 H. SHIMMIN

2 THE WITNESS: It will reject --
3 sorry.

4 BY MR. BURROUGHS:

5 Q Go ahead.

6 A It either will accept or reject.
7 It's not a curation process.

8 Q So is it fair to say that
9 Shutterstock reviews a pool of
10 photographs, rejects some of them, and
11 selects others for use on its website?

12 MS. LACKMAN: Objection. Misstates
13 the testimony. No foundation for, "Pool
14 of photographs."

15 THE WITNESS: I wouldn't use the
16 word, "Select." It's just rejected or
17 approved. It's not saying, "We love this,
18 we don't like this." It has nothing to do
19 with like -- does it meet a certain
20 criteria? Accepted. If it doesn't, it's
21 rejected.

22 BY MR. BURROUGHS:

23 Q So is it fair to say that
24 Shutterstock will review the pool of
25 photographs submitted by the contributors

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2 and approve some and reject others with
3 the approved photographs appearing on
4 Shutterstock's site and the rejected
5 photographs not appearing on
6 Shutterstock's site?

7 MS. LACKMAN: Objection. No
8 foundation as to, "Pool of photographs."
9 Misstates the testimony. Asked and
10 answered.

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A Yes.

14 Q And for the photographs
15 submitted by contributors that are
16 rejected, those will not appear on
17 Shutterstock's site, correct?

18 MS. LACKMAN: Objection. Calls for
19 speculation. You can answer if you know.

20 THE WITNESS: No. Rejected images
21 are not available to be licensed on the
22 site.

23 BY MR. BURROUGHS:

24 Q Okay. So only the photograph
25 that Shutterstock approves are available

1 H. SHIMMIN

2 to be licensed on the site, correct?

3 MS. LACKMAN: Objection. Vague.

4 Compound.

5 THE WITNESS: Yes.

6 BY MR. BURROUGHS:

7 Q Can a Shutterstock contributor
8 upload a photograph directly to
9 Shutterstock's site where it's offered for
10 license?

11 MS. LACKMAN: Objection. Vague as
12 to, "Directly."

13 THE WITNESS: No. It has to go
14 through the review process.

15 BY MR. BURROUGHS:

16 Q Okay. And can a Shutterstock
17 contributor upload a photograph to
18 Shutterstock where it's displayed at the
19 time of upload on Shutterstock?

20 MS. LACKMAN: Objection to the extent
21 it calls for a legal interpretation.
22 Asked and answered.

23 THE WITNESS: I mean, the contributor
24 submit it. It goes to review. After it's
25 not rejected, if it's approved, eventually

1 H. SHIMMIN

2 not immediate. A lot of little things
3 automatically go through this process
4 before an image is ready.

5 BY MR. BURROUGHS:

6 Q Okay. And is it fair to say
7 that all those things on the Shutterstock
8 system that the image must go through are
9 within Shutterstock's control?

10 MS. LACKMAN: Objection to the extent
11 it calls for a legal interpretation.
12 Vague. Overbroad.

13 THE WITNESS: As a non-engineer, I
14 don't understand every single process.
15 I'm going to say I don't know. There's a
16 lot of things going on.

17 BY MR. BURROUGHS:

18 Q Does the contributor have any
19 involvement with all of those steps?

20 A No. Once the contributor hits
21 submit, they don't have any control until
22 it's approved.

23 Q Okay. And is it fair to say
24 that once the contributor hits submit,
25 Shutterstock has exclusive control over

1 H. SHIMMIN

2 what appears on the website?

3 MS. LACKMAN: Objection. Misstates
4 the testimony. Calls for a legal
5 interpretation as to exclusive. Vague.

6 THE WITNESS: I'm not quite sure how
7 to answer that. In that situation,
8 Shutterstock's not controlling it. It's
9 just it goes through an automated process
10 that is set up by various chains.

11 BY MR. BURROUGHS:

12 Q And does Shutterstock
13 exclusively decide what appears on its
14 site?

15 MS. LACKMAN: Objection. Same
16 objections. Asked and answered.

17 THE WITNESS: No. Shutterstock does
18 not determine what appears on the site.
19 It's contributor-run, and it's only going
20 through this quality and compliance check.

21 BY MR. BURROUGHS:

22 Q So can contributor content
23 appear on Shutterstock's website without
24 the approval of Shutterstock?

25 MS. LACKMAN: Objection. Asked and

1 H. SHIMMIN

2 answered.

3 THE WITNESS: Without the approval of
4 the reviewer, no.

5 BY MR. BURROUGHS:

6 Q Okay. So is it fair to say that
7 no photograph will appear on Shutterstock
8 unless the Shutterstock reviewer approves
9 it?

10 MS. LACKMAN: Objection to the extent
11 it mischaracterizes the testimony. You
12 can answer again.

13 THE WITNESS: That's true. It has to
14 be approved by a reviewer.

15 BY MR. BURROUGHS:

16 Q And if it's not approved by a
17 Shutterstock reviewer, it will not appear
18 on the site, correct?

19 A No --

20 MS. LACKMAN: Objection. Asked and
21 answered.

22 BY MR. BURROUGHS:

23 Q If the Shutterstock reviewer
24 rejects the photograph, will it appear on
25 the site?

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2 A It will not be available for
3 licensing.

4 Q And will it appear on the site?

5 MS. LACKMAN: Objection. Vague. Can
6 you clarify?

7 THE WITNESS: No.

8 BY MR. BURROUGHS:

9 Q So just to be clear, unless and
10 until a Shutterstock reviewer approves a
11 particular photograph, it will not appear
12 on the Shutterstock website or be
13 available for license. Is that correct?

14 MS. LACKMAN: Objection, compound,
15 and object to the extent it misstates the
16 testimony.

17 THE WITNESS: Yes.

18 BY MR. BURROUGHS:

19 Q So can anyone become a
20 contributor, or does Shutterstock vet its
21 contributors?

22 MS. LACKMAN: Objection, compound.

23 THE WITNESS: Anyone can sign up to
24 be a contributor. They have to confirm
25 their email address. And in order to get

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2 MS. LACKMAN: Objection. Vague.

3 Compound -- confusing. I don't
4 understand. Do you mean, in the next 15
5 minutes, you can go up there, the photo
6 will appear in 15 minutes? Like, can you
7 please rephrase? I just don't understand
8 the question.

9 BY MR. BURROUGHS:

10 Q Remember, it's not important if
11 your attorney understands. It's important
12 if you understand. Do you understand the
13 question?

14 A You can sign up to be a
15 contributor, and you can start submitting
16 photographs today, probably.

17 Q Okay. And when I submit those
18 photographs, would they go online and be
19 displayed by Shutterstock instantly, or
20 would I have to wait for the review
21 process that you referred to?

22 MS. LACKMAN: Objection, asked and
23 answered.

24 THE WITNESS: No. As I already
25 explained, it has to go through a

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2 submission -- a review process.

3 BY MR. BURROUGHS:

4 Q So if I went to Shutterstock and
5 was approved as a contributor and uploaded
6 photographs, I would have to wait for the
7 review process before those went live on
8 Shutterstock, correct?

9 A Yes.

10 Q And when I submit -- well, let
11 me withdraw that. So after a hopeful
12 contributor submits photographs to
13 Shutterstock, what happens to those
14 photographs?

15 MS. LACKMAN: Objection, vague.
16 Calls for speculation. Asked and
17 answered. She went through this in
18 detail.

19 THE WITNESS: Can you be more
20 specific?

21 BY MR. BURROUGHS:

22 Q Do they go into a queue?

23 A After it's submitted? Yeah. It
24 goes into a queue to be reviewed. There's
25 various queues. For example, video and

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2 images are separated.

(3) Q (So if I submitted photographs,) (4) (they'd go in the photography queue?)

(5) A (Yes.)

(6) Q (Okay.) (And then those would be) (7) (reviewed by a Shutterstock employee?)

(8) (MS.) (LACKMAN:) (Objection to the extent) (9) (it calls for a legal interpretation of,) (10) ("Employee.")

(11) (BY MR.) (BURROUGHS:)

(12) Q (Go ahead.)

(13) A (No, they're contractors.)

(14) Q (And they're contractors hired by) (15) (Shutterstock?)

(16) A (Some are.)

(17) Q (Where are the others from?)

(18) A (Shutterstock has an agency that) (19) (manages the reviewers, and they are in) (20) (charge of like the screening and hiring of) (21) (those reviewers.)

(22) Q (Okay.) (So some of the reviewers) (23) (are hired directly by Shutterstock, others) (24) (are hired through an agency?)

(25) A (Yes.)

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percent.

BY MR. BURROUGHS:

Q And as the reviewers are working through the queue, when they come to a particular photograph, what do they do when they look at it to see whether or not it fits the Shutterstock portfolio standard?

MS. LACKMAN: Objection to the extent it misstates the testimony. Asked and answered.

THE WITNESS: So, yeah, they'll look at -- they have an ability to zoom in. It might be a logo, so they can check, for compliance reasons, if it's an identifiable person. Is there a model release, they'll look at the model release if it's been submitted. They'll look at the quality of the image, and then they will look at the title and the keywords that the contributor keyed in. And they'll look at the categories that their contributor chose. They'll look at the location. If they submitted a property

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2 (release.) (Whether) (or) (not) (it) (was) (submitted)
3 (as) (editorial) (or) (not.)

4 (So) (they'll) (do) (a) (review) (process.)
5 (If) (they) (think) (that) (everything's) (fine,) (they)
6 (can) (hit) (approve.) (They) (can) (hit) (reject) (if)
7 (they) (find) (an) (issue.) (Or) (they) (can) (also)
8 (escalate) (the) (image) (to) (one) (of) (our) (review)
9 (coordinators) (if) (they) (have) (a) (question.) (For)
10 (example,) ("I) (can't) (quite) (make) (out) (the)
11 (signature) (of) (this) (model) (release.) (Can) (I)
12 (approve) (it?") (For) (example.) (Or,) ("I) (can't)
13 (quite) (tell) (if) (this) (trademark) (is) (visible)
14 (enough) (to) (be) (an) (issue.") (That) (sort) (of)
15 (thing) (they) (can) (escalate) (and) (ask) (questions.)

16 BY MR. BURROUGHS:

17 Q So is it fair to say that, when
18 Shutterstock is reviewing the submissions
19 to see if they meet the Shutterstock
20 standard, the reviewer can either say,
21 "Yes," and approve, "No," and reject, or
22 escalate it to a supervisor if it's a
23 difficult question?

24 MS. LACKMAN: Objection, vague.

25 THE WITNESS: Yes. Those are their

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2 options.

3 BY MR. BURROUGHS:

4 Q Okay. And you said the folks
5 that are a level above the reviewers are
6 called review coordinators?

7 A Yes.

8 Q Okay. And did they have a
9 separate set of guidelines that they use
10 to curate or select photographs, or do
11 they use the same reviewer guidelines that
12 the initial reviewers use?

13 MS. LACKMAN: Objection. Foundation.

14 THE WITNESS: Yes, it's the same
15 guidelines.

16 MS. LACKMAN: Scott, I've just
17 noticed we've been going about an hour. I
18 don't want to interrupt your flow, but if
19 there's a point at which you think we
20 could take a break, I could use one in the
21 next few minutes.

22 MR. BURROUGHS: Yeah. We can
23 probably go off the record in about three
24 or four minutes here.

25 MS. LACKMAN: Thanks.

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2 BY MR. BURROUGHS:

3 Q So going back to the process,
4 when the reviewer says yes and approves
5 the photograph, it's at that point that
6 the photograph can first be made available
7 to Shutterstock customers, correct?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: No. As I said, it has
10 to go through various other little steps.
11 It's not necessarily instant. Sometimes
12 it might happen within a minute or two.
13 It really depends on the day, to be
14 honest. How backlogged the system is, for
15 example.

16 BY MR. BURROUGHS:

17 Q Fair enough. So is it fair to
18 say that a contributor will submit a
19 photograph, the Shutterstock reviewer, an
20 individual, will review it, and if that
21 reviewer finds that it meets
22 Shutterstock's standards, then it will
23 move it to this secondary process that
24 must be run before the photograph goes
25 live on the Shutterstock site?

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2 MS. LACKMAN: Objection to the extent
3 it mischaracterizes the testimony. Vague
4 as to process.

5 THE WITNESS: Essentially, yes.

6 BY MR. BURROUGHS:

7 Q Okay. And are you aware of any
8 of the steps that go in within that second
9 phase of the review?

10 MS. LACKMAN: Objection to the
11 categorization of, "Second phase of
12 review." Misstates testimony.

13 THE WITNESS: I know very generally.
14 I know a watermark is generated, and a few
15 different sizes of thumbnail are made
16 available. The photo is resized depending
17 on how -- where it's being displayed. I'm
18 sure there's more, but I'm not aware of
19 specifics.

20 BY MR. BURROUGHS:

21 Q Okay. And how many different
22 sizes are made available on the
23 Shutterstock site?

24 MS. LACKMAN: Objection. Vague. No
25 foundation.

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2 THE WITNESS: I don't know exactly
3 how many.

4 BY MR. BURROUGHS:

5 Q Is it fair to say that a
6 thumbnail, a large, and a medium are made
7 available?

8 MS. LACKMAN: Objection. Objection
9 to the characterization of the question.

10 THE WITNESS: I know a certain number
11 are made immediately, and then some are
12 made later. For example, if -- well, I'm
13 guessing. I'm not sure. They're not all
14 made at the same time, so certain actions
15 need to happen in order for different
16 thumbnails to be created.

17 BY MR. BURROUGHS:

18 Q Okay, and at some point
19 Shutterstock makes available a full size
20 copy of the photographs submitted by the
21 contributor, right?

22 MS. LACKMAN: Objection. Vague as to
23 full size.

24 THE WITNESS: A full size would only
25 be available upon a customer licensing the

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2 image. When they hit, "License," and
3 download it, then they have access to the
4 full size.

5 BY MR. BURROUGHS:

6 Q Okay, and is it also full
7 resolution?

8 MS. LACKMAN: Objection, vague.

9 THE WITNESS: When I say, "Full
10 size," it is the size and resolution that
11 the contributor submitted.

12 BY MR. BURROUGHS:

13 Q And the size that's displayed on
14 Shutterstock's website before download is
15 also close to full size, correct?

16 MS. LACKMAN: Objection, vague.
17 Misstates testimony.

18 THE WITNESS: No. It would also
19 depend on the size that the contributor
20 submitted.

21 BY MR. BURROUGHS:

22 Q Okay. How would you
23 characterize the size that the photograph
24 is displayed on the Shutterstock website
25 before download?

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2 five images you'd like.

(3) Q Okay. Now when a customer goes
(4) to Shutterstock to obtain a license or a
(5) package or one of the other services that
(6) Shutterstock provides, is the contributor
(7) involved at all in that transaction?

(8) MS. LACKMAN: Objection, vague.
(9) Calls for speculation.)

(10) THE WITNESS: No, the contributor is
(11) not part of any of that.)

(12) BY MR. BURROUGHS:

(13) Q Okay. So is it fair to say that
(14) the contributor's involvement ends after
(15) the submission of the photograph, other
(16) than receiving payments?

(17) MS. LACKMAN: Objection. Misstates
(18) testimony.)

(19) THE WITNESS: The only other thing a
(20) contributor could do is they could choose
(21) to delete content from the portfolio, or
(22) they could opt out of sales. That's the
(23) only other thing a contributor could do.)

(24) BY MR. BURROUGHS:

(25) Q And when they decide to delete

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2 content or assets, does Shutterstock
3 maintain rights to that content for a
4 particular time?

5 MS. LACKMAN: Objection. Vague,
6 compound. Calls for legal interpretation.

7 THE WITNESS: When a contributor
8 chooses to delete an image, it is in the
9 terms of service that Shutterstock say
10 that within, I think 30 or 60, I think
11 it's 60 days, Shutterstock could still
12 possibly license that content.

13 BY MR. BURROUGHS:

14 Q And isn't it true that the terms
15 also indicate that any licenses that
16 Shutterstock has granted in connection
17 with that content will remain valid
18 notwithstanding the deletion or removal?

19 MS. LACKMAN: Objection to the extent
20 it calls for a legal interpretation
21 outside the scope.

22 THE WITNESS: So Shutterstock
23 licenses are worldwide in perpetuity, so
24 even if a contributor decides not to make
25 that asset available, even if it's been

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obviously we don't accept anything that's pornographic. We don't want anything offensive to, you know, any race or religion or hate speech. And again, the things I mentioned before. The quality -- there's some quality things to look at. Look at any sort of compliance issue that (9) (may) (be) (a) (problem.) (They'll) (also) (look) (at) (--) (10) (is) (there) (a) (watermark) (on) (it,) (if) (so,) (does) (11) (the) (watermark,) (does) (the) (name) (match) (the) (12) (contributor's,) (because) (that's) (a) (different) (13) (rejection) (--) (if) (the) (contributor) (names) (14) (match,) (then) (they'll) (be) (rejected) (for) (15) (branding,) (which) (isn't) (allowed,) (but) (if) (it) (16) (doesn't) (match) (then) (it) (would) (be) (escalated) (17) (to) (a) (review) (coordinator) (to) (investigate) (for) (18) (fraud.)

(19) (The) (contributor) (has) (the) (ability) (20) (to) (see) (three) (things) (as) (far) (as) (metadata) (21) (goes.) (They) (can) (see) (the) (file) (name.) (They) (22) (can) (see) (the) (description,) (title.) (And) (they) (23) (can) (see) (the) (keywords.) (So) (they) (look) (at) (24) (those,) (make) (sure) (there's) (nothing) (--) (you) (25) (know,) (no) (offensive) (language) (or) (making) (sure)

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2 (that) (the) (title) (is) (relatively) (close) (to) (what)
3 (the) (image) (is) (actually) (of.) (We) (don't) (want) (a)
4 (title) (to) (say,) ("Man) (sitting) (in) (a) (tree,")
5 (when) (in) (fact) (it's) (a) (car) (going) (down) (the)
6 (street,) (so) (we) (want) (to) (make) (sure) (it's)
7 (relatively) (accurate.) (Releases) (if) (they're)
8 (submitted.) (They're) (looking) (at,) (you) (know,)
9 (is) (this) (a) (commercial) (image) (or) (an) (editorial)
10 (image,) (making) (sure) (the) (proper) (box) (is)
11 (ticked.) (Categories,) (location,) (which) (they)
12 (can't) (--) (locations) (seem) (accurate.)

13 It's pretty much it. It's
14 actually a very quick -- you know, maybe
15 ten to 20 seconds. Maybe they're doing
16 all these things and it's approve, reject,
17 or escalate, and then they move to the
18 next one. It's automatically populated
19 for them.

20 BY MR. BURROUGHS:

21 Q Will the reviewer review a
22 photograph for blurriness?

23 MS. LACKMAN: Objection. Asked and
24 answered.

25 THE WITNESS: Focus is one of the

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2 more intentional, like these out-of-focus
3 background like I mentioned before, bokeh.

4 THE REPORTER: I'm sorry, you were
5 drifting towards the end.

6 THE WITNESS: It's B-O-K-E-H. It's a
7 camera technique where essentially you
8 just blur out everything.

9 BY MR. BURROUGHS:

10 Q So Shutterstock provides them
11 with that training, and then they can use
12 their discretion to decide if something is
13 out of focus or not up to Shutterstock's
14 focus standards?

15 MS. LACKMAN: Same objection before
16 as to, "Discretion."

17 THE WITNESS: Yes.

18 BY MR. BURROUGHS:

19 Q And will the Shutterstock
20 reviewer also review a submission for
21 exposure?

22 MS. LACKMAN: Objection, vague.

23 THE WITNESS: Yes. Exposure is one
24 of the qualities checked.

25 //

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2 BY MR. BURROUGHS:

3 Q And similarly, does the
4 Shutterstock reviewer, after being trained
5 by Shutterstock, use his or her discretion
6 in accepting or rejecting a photograph due
7 to its exposure?

8 MS. LACKMAN: Same objection as
9 before.

10 THE WITNESS: Yes.

11 BY MR. BURROUGHS:

12 Q And will a reviewer look at the
13 lighting of a photograph in deciding
14 whether or not to approve or reject it?

15 A We would lump lighting in with
16 exposure.

17 Q And similarly, that reviewer is
18 trained by Shutterstock on what's
19 acceptable and up to Shutterstock's
20 standards, and then the reviewer uses his
21 or her discretion in deciding whether or
22 not to accept or reject the photograph on
23 that basis?

24 MS. LACKMAN: Objection. Compound.
25 Mischaracterizes the testimony.

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2 THE WITNESS: Yes.

3 BY MR. BURROUGHS:

4 Q Do the Shutterstock reviewers
5 review submissions for composition?

6 A Yes.

7 Q And do the Shutterstock
8 reviewers being trained by Shutterstock
9 have the discretion to accept or reject a
10 photograph based on its composition?

11 MS. LACKMAN: Same objections.

12 THE WITNESS: Yes.

13 BY MR. BURROUGHS:

14 Q Okay. And do Shutterstock
15 reviewers take into account whether or not
16 Shutterstock has too many works in a
17 particular category when reviewing
18 photographs submitted by contributors?

19 MS. LACKMAN: Objection, vague.

20 THE WITNESS: No.

21 BY MR. BURROUGHS:

22 Q For example, has Shutterstock
23 ever advised its reviewers, "Please don't
24 accept any more photographs of beach
25 sunsets because we have too many

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2 (Exhibit 5 was marked for
3 identification.)

4 A Yeah.

5 Q Okay. How do you recognize it
6 and what is it?

7 A This is another resource we have
8 available to contributors regarding
9 copyright and IP and their work.

10 Q Okay. So is this additional
11 information that Shutterstock provides to
12 contributors in connection with the
13 working relationship?

14 A Yes.

15 Q Okay. And I want you to take a
16 look at this page, 2340. Does this
17 accurately reflect the flow of the
18 photography from contributor to end user?

19 MS. LACKMAN: Do you mind scrolling
20 up, because I can't see the top. I just
21 couldn't read the top line. Thanks.

22 THE WITNESS: It's mostly true.

23 Number 4 has changed slightly since this
24 was published.

25 //

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2 BY MR. BURROUGHS:

3 Q How has that changed?

4 A It's no longer -- contributors'
5 earnings are no longer based on -- I mean,
6 their royalties are no longer based on
7 their earnings but number of either images
8 or videos sold.

9 Q Okay -- but is it still the case
10 that Shutterstock, after approving a
11 contributor's photography, will license
12 that photography to Shutterstock customers
13 and then pay royalties to the contributor?

14 A Yes.

15 Q Okay. Does Shutterstock assign
16 any code or reference to a particular
17 asset or photograph?

18 MS. LACKMAN: Objection. Vague.
19 Compound.

20 THE WITNESS: An ID number is
21 assigned to every asset that's submitted.

22 BY MR. BURROUGHS:

23 Q Okay. And how are those number
24 generated?

25 MS. LACKMAN: Objection. Vague.

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2 to review this, and I'll represent to you
3 that this is from this case, and these are
4 the photographs that Dr. McGucken alleges
5 were exploited by Shutterstock without his
6 consent. Tell us if you want to go slower
7 or faster. We'll give you some time to
8 review these. Okay. Do you need to go
9 back to any particular page or look at any
10 particular photograph again?

11 A Not at the moment.

12 Q Okay. And if the photographs in
13 Exhibit 6 appeared on Shutterstock's site
14 for licensing, that would mean that
15 Shutterstock's reviewer team reviewed and
16 approved those photos, correct?

17 MS. LACKMAN: Objection to the extent
18 it calls for speculation.

19 THE WITNESS: If the image is on site
20 available for licensing, then yes, it was
21 approved.

22 BY MR. BURROUGHS:

23 Q Okay. And Shutterstock licensed
24 McGucken's photographs approximately 930
25 times, is that correct?

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2 A That's my understanding, yes.

3 Q Okay. And where did you find
4 that information?

5 A It was in part of the
6 documentations I read regarding the case.

7 Q Okay. Did you see those actual
8 licenses?

9 MS. LACKMAN: Objection. Vague.

10 THE WITNESS: I saw the certain -- a
11 list of licenses. I didn't go through
12 line-by-line to see what was licensed to
13 them.

14 BY MR. BURROUGHS:

15 Q Okay. And how was that list of
16 licenses generated?

17 A We have a report we can run, and
18 then we can export it as a .csv file.

19 Q Okay. And what does that report
20 include?

21 A It includes the asset ID number,
22 the name of the -- username of the client
23 who licensed it. The date, the type of
24 license. And some of the licensee's
25 contact information. Like the location,

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2 live on the site. We're not going to go
3 hunting around for an image without an ID
4 number.

5 BY MR. BURROUGHS:

6 Q Does Shutterstock have a
7 relationship with third-party image sites
8 like TinEye?

9 MS. LACKMAN: Objection to the term,
10 "Third-party image sites." Outside the
11 scope.

12 THE WITNESS: I don't know the
13 details but Shutterstock does have an
14 agreement with TinEye.

15 BY MR. BURROUGHS:

16 Q Okay. And TinEye will, at
17 times, display Shutterstock content,
18 correct?

19 MS. LACKMAN: Objection. Vague as
20 to, "Shutterstock content."

21 THE WITNESS: It does -- it can
22 display Shutterstock images that are
23 submitted to Shutterstock, yes.

24 BY MR. BURROUGHS:

25 Q Okay. And Shutterstock makes

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2 those images available to TinEye, correct?

3 MS. LACKMAN: Objection. Vague as
4 to, "Images."

5 THE WITNESS: TinEye is an API
6 partner. So TinEye has access to
7 Shutterstock's library. So we are not
8 choosing which images are displayed.

9 BY MR. BURROUGHS:

10 Q So if an image is live on
11 Shutterstock's site and this third party
12 like TinEye has the API link to that
13 content, that third party can display that
14 content, correct?

15 MS. LACKMAN: Objection. Calls for a
16 legal conclusion and expert opinion as to
17 display. Vague as to, "Link."

18 BY MR. BURROUGHS:

19 Q Go ahead.

20 A If an image were approved on the
21 site, it could show up through a search on
22 TinEye, but it does not necessarily mean
23 that that image is available to be
24 licensed.

25 Q Does Shutterstock's agreement

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2 an image within Facebook to use in your
3 campaign without leaving Facebook. You
4 wouldn't have to come Shutterstock license
5 it and come back. For example.

6 Q Okay, any others.

7 A Yeah, there's a bunch. There's
8 Adobe. There's -- who else? There's,
9 like, art.com, fineartprints,
10 fineartamerica.com --

11 THE REPORTER: What? Louder. You've
12 got to speak louder.

13 THE WITNESS: fineartamerica. I
14 think artprint.com is another one.

15 BY MR. BURROUGHS:

16 Q And each of those sites have
17 access to Shutterstock's photography and
18 can display Shutterstock's photography via
19 the Shutterstock API, correct?

20 MS. LACKMAN: Objection. Vague.
21 Compound. Vague as to, "Photography."
22 Legal conclusion as to, "Display."

23 THE WITNESS: Every agreement is
24 slightly different. Some agreements allow
25 access to the whole library, or some just

1 H. SHIMMIN
2 a certain part of the library or certain
3 topics. The idea is that, through this
4 other site, they can access some content
5 and license it via this API through
6 Shutterstock.

7 BY MR. BURROUGHS:

8 Q Okay. Is Hello RF an API
9 partner of Shutterstock?

10 MS. LACKMAN: Objection to the
11 term -- to the extent that the term,
12 "Partner," refers to a legal conclusion.

13 THE WITNESS: Hello RF is an
14 authorized reseller.

15 BY MR. BURROUGHS:

16 Q Okay. And explain the
17 authorized reseller relationship.

18 MS. LACKMAN: Objection. Outside the
19 scope.

20 THE WITNESS: I don't know the
21 specifics of Hello RF, but generally
22 speaking, we have authorized resellers in
23 countries that either have more
24 complicated laws or it just makes more
25 sense business-wise to have a local firm.

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2 So our content, through that company and
3 not through Shutterstock. There's a lot
4 of technicalities and legalities that we
5 as an American company don't understand in
6 China, so it makes better sense to have a
7 Chinese company be a reseller.

8 BY MR. BURROUGHS:

9 Q Okay. And are Shutterstock's
10 authorized resellers able to sell
11 Shutterstock content that Shutterstock
12 provides to the reseller?

13 MS. LACKMAN: Objection. Outside the
14 scope.

15 THE WITNESS: No. The content is
16 still licensed through Shutterstock. The
17 authorized reseller would be, say, a
18 portal. So they are not selling it.
19 Shutterstock still is.

20 BY MR. BURROUGHS:

21 Q Understood. So the Shutterstock
22 content would appear on the third-party
23 reseller site, but the sales of licenses
24 for that content would still be directly
25 with Shutterstock, correct?

1 H. SHIMMIN

2 MS. LACKMAN: Objection. Vague as
3 to, "Shutterstock content."

4 THE WITNESS: Yes. My understanding
5 is yes.

6 BY MR. BURROUGHS:

7 Q Okay. Does Shutterstock have a
8 relationship with Stock Fresh?

9 A I don't know.

10 Q Okay. Have you ever heard of
11 that company?

12 A No, I am not familiar with Stock
13 Fresh.

14 Q Okay. What other authorized
15 resellers does Shutterstock work with?

16 MS. LACKMAN: Objection. Misstates
17 the testimony as to, "Other authorized
18 resellers."

19 THE WITNESS: We have a bunch. We
20 have one in Russia called Fotodom.

21 BY MR. BURROUGHS:

22 Q Can you spell that?

23 A I think it's F-O-T-O-D-O-M. I'm
24 trying to think offhand. There's quite a
25 few. I don't work in the space with

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Is anyone other than
4 Shutterstock responsible for adding the
5 watermark?

6 MS. LACKMAN: Objection, vague.
7 Asked and answered.

8 THE WITNESS: No.

9 BY MR. BURROUGHS:

10 Q Okay. Why does Shutterstock add
11 its watermark to the photos?

12 MS. LACKMAN: Objection. Calls for
13 speculation.

14 THE WITNESS: Generally it's so --
15 you can see that the one that hasn't been
16 licensed. We want customers to license
17 images properly. It's also to see where
18 the person, you know, is using this image
19 that doesn't have the license. For
20 example, Getty or iStock also puts their
21 watermark on to know what agency is
22 sourcing their material.

23 BY MR. BURROUGHS:

24 Q Okay. And looking at the size
25 of this photograph with the Shutterstock

1 H. SHIMMIN

2 A No.

3 Q How else can a customer, aside
4 from the five photograph free programs,
5 obtain the photograph unwatermarked from
6 Shutterstock?

7 A Well, there's third-party
8 malicious websites that you can download
9 any, you know, any image without a license
10 or a watermark that is not associated with
11 Shutterstock. But people can obtain
12 watermark-free content illegally.

13 Q But my question was, from
14 Shutterstock. How can a customer obtain a
15 watermark-free version of Shutterstock
16 photography from Shutterstock without
17 making payment?

18 MS. LACKMAN: Objection -- misstates
19 testimony.

20 THE WITNESS: A full resolution,
21 watermark-free image is only available
22 after a license has been purchased.

23 BY MR. BURROUGHS:

24 Q And what are the names of the
25 third-party sites that you mentioned that

1 H. SHIMMIN

2 seen this before. It doesn't look
3 familiar.

4 BY MR. BURROUGHS:

5 Q Okay. Let's scroll up. Is it
6 accurate that Shutterstock sources high-
7 quality content from contributors and
8 licenses that content to customers
9 worldwide?

10 MS. LACKMAN: Objection, vague.

11 THE WITNESS: Yes, it is.

12 BY MR. BURROUGHS:

13 Q Can we scroll down a little bit?
14 And is it accurate that Shutterstock
15 contributors earn cash when their content
16 is downloaded -- go ahead.

17 A Specifically no, the money goes
18 into an account. When they reach a
19 certain payout threshold that they set,
20 it's delivered to them via PayPal or, you
21 know -- or whatever. So technically no,
22 we are not mailing out money.

23 Q Okay. Is it fair to say
24 contributors are compensated when their
25 content is downloaded?

1 H. SHIMMIN

2 THE WITNESS: Yes.

3 BY MR. BURROUGHS:

4 Q I'm going to put another
5 document in front of you, we're going to
6 mark as Exhibit 8. This is MCG-3596 to
7 3597. Now do you recognize the
8 screenshots in this exhibit?

9 (Exhibit 8 was marked for
10 identification.)

11 MS. LACKMAN: Can you be more
12 specific as to, "Screenshot"? I see two.

13 BY MR. BURROUGHS:

14 Q Do you understand which -- and
15 again, she's just saying things for the
16 record. If you understand the question,
17 you can still answer.

18 MS. LACKMAN: I'm saying things to
19 help you get cleaner testimony, so. If
20 you don't want to take me up on them,
21 that's fine, but you can answer if you
22 understand the question.

23 THE WITNESS: I'm just also being
24 courteous and letting my lawyer voice her
25 objections.

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q I understand.

4 A So, yeah, this is an asset
5 detail page.

6 Q Okay. And is it an asset detail
7 page for a photograph that Shutterstock is
8 offering to the public for licensing?

9 MS. LACKMAN: Objection. Calls for
10 speculation --

11 THE WITNESS: Yes, it is.

12 BY MR. BURROUGHS:

13 Q Okay. And is this the size and
14 resolution that a viewer sees when they
15 see the asset detail page for a photograph
16 on Shutterstock's site?

17 MS. LACKMAN: Objection. Calls for
18 speculation.

19 THE WITNESS: Yes. It could be
20 varying sizes as far as the layout. If it
21 was a panorama, it would be a long, skinny
22 shot, but generally speaking, yes -- I'm
23 sorry?

24 THE REPORTER: What was the last part
25 you said? "As far as the layout --"

1 H. SHIMMIN

2 THE WITNESS: I'm sorry. Generally
3 speaking, yes.

4 THE REPORTER: Thank you.

5 BY MR. BURROUGHS:

6 Q So it's fair to say that this is
7 one of the sizes that Shutterstock will
8 display to its potential customers?

9 MS. LACKMAN: Objection, vague.
10 Calls for legal interpretation.

11 THE WITNESS: Yes.

12 BY MR. BURROUGHS:

13 Q I see the button there,
14 "Download for free." Is that part of the
15 five free photo program you mentioned
16 earlier?

17 A Yes.

18 Q And I also see in the upper-
19 right corner, "Free trial"? Is that also
20 part of that program?

21 A I believe that's a separate
22 program where you can, you know, upon
23 committing for a year, you can try out one
24 or two weeks -- I don't know the details.
25 The program changes slightly, but the

1 H. SHIMMIN

2 concept is, you know, you try it out for
3 free, and if you like it, you sign up for
4 a year.

5 Q Okay. Let's look at this second
6 box here, "View an Enlarged Version of the
7 Photograph." Scroll down. So if I was to
8 click on the photograph from the first
9 screenshot, would I be given this enlarged
10 version?

11 MS. LACKMAN: Objection --
12 speculation.

13 THE WITNESS: If you click on the
14 magnifying glass, you'll get this other
15 version of the image.

16 BY MR. BURROUGHS:

17 Q Okay. Let's scroll back up to
18 the top. Which magnifying glass are we
19 talking about?

20 A It's probably in the cloud
21 that's white. I don't think you can see
22 it -- the top-right, there's a little
23 magnifying glass --

24 Q And up top there you see an
25 indication of something called

1 H. SHIMMIN

2 Shutterstock Flex. What's that?

3 MS. LACKMAN: Objection. Outside the
4 scope.

5 THE WITNESS: So Flex is a new
6 offering where a client can pay a flat fee
7 and be able to download or license music,
8 video, and photos. It's flexible what
9 kind of asset you want to download or
10 license.

11 BY MR. BURROUGHS:

12 Q Does the pricing vary depending
13 on what you're looking to license?

14 MS. LACKMAN: Objection, vague.

15 THE WITNESS: I actually do not know
16 the specifics. But typically, if you
17 wanted music or you wanted a video, you
18 had to have two separate plans. So I need
19 a music plans that gives me whatever, ten
20 downloads a month, and a footage plan that
21 may be ten downloads a month, and you'd
22 have to buy two separate plans. The Flex
23 plan is one price and it doesn't matter
24 the asset you buy. The price point and
25 the minutiae I don't know.

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Okay. So then let's scroll
4 down. Let's scroll down one more. So is
5 this one of the free trial packages that
6 you mentioned earlier?

7 MS. LACKMAN: Objection, vague.

8 THE WITNESS: There's always some
9 sort of variation, but yes, this is one
10 of -- an offer that we have.

11 BY MR. BURROUGHS:

12 Q Okay. And then let's scroll to
13 the final box. Does Shutterstock serve
14 this ad on top of its asset detail page
15 when the viewer is clicking away?

16 MS. LACKMAN: Objection. Outside the
17 scope. Vague as to time.

18 THE WITNESS: Not always. It depends
19 on the campaign they're running at the
20 time.

21 BY MR. BURROUGHS:

22 Q Okay. All right. I'm going to
23 put a document in front of you we're going
24 to mark as Exhibit 9. It's MGC 001-887.
25 Have you ever seen this document before?

1 H. SHIMMIN

2 (Exhibit 9 was marked for
3 identification.)

4 A No, I don't think so.

5 Q Okay. I'm going to have you
6 look at a paragraph that starts, "We also
7 leverage, to the greatest extent
8 possible --"

9 MS. LACKMAN: Objection. No
10 foundation. Never seen the document.
11 Document has not been produced to us as
12 far as I can tell -- oh, maybe it just
13 was.

14 BY MR. BURROUGHS:

15 Q All right. We're going to try
16 to highlight that for you. See that? "We
17 also leveraged, to the greatest extent
18 possible, the global nature of our user
19 interface and marketing efforts, including
20 local languages, currencies, and payment
21 methods, and our effective use of current
22 and emerging technology and marketing
23 channels to attract and retain customers
24 and contributors." Do you see that?

25 A Yes.

1 H. SHIMMIN

2 Q And now is that an accurate
3 statement about Shutterstock's business?

4 MS. LACKMAN: Objection, vague. No
5 foundation. Outside the scope.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q Okay. I'm going to have you
9 look at another paragraph that starts,
10 "Our collection of content." I want you
11 to read that paragraph and tell me if
12 that's an accurate statement about
13 Shutterstock's business.

14 MS. LACKMAN: Same objection as to
15 foundation.

16 THE WITNESS: Okay.

17 BY MR. BURROUGHS:

18 Q Okay. Is that an accurate
19 statement about Shutterstock's business?

20 MS. LACKMAN: Same objection.

21 THE WITNESS: Yes.

22 BY MR. BURROUGHS:

23 Q And then can you read the next
24 paragraph, starting with, "The breadth and
25 quality"?

1 H. SHIMMIN

2 A Okay.

3 Q Is that an accurate statement
4 about Shutterstock's business?

5 MS. LACKMAN: Same set of objections.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q Okay. I'm going to have you
9 look at a paragraph that starts, "For each
10 content submission."

11 MS. LACKMAN: Same objections.

12 BY MR. BURROUGHS:

13 Q Is that also an accurate
14 statement of Shutterstock's business?

15 A Oh, I'm sorry. I was looking
16 for the paragraph that began, "For
17 each --"

18 Q Oh, I'm sorry. I think it might
19 be up on page 7.

20 A So the last one was the breadth
21 and quality.

22 Q Okay -- second paragraph on page
23 8, it looks like.

24 A Second paragraph -- "We
25 evaluate"? That one?

1 H. SHIMMIN

2 again?

3 MS. LACKMAN: It misstates the
4 testimony.

5 BY MR. BURROUGHS:

6 Q If I were to google a
7 Shutterstock image ID number, could I then
8 locate the asset detail page for the
9 photograph with that ID number?

10 MS. LACKMAN: Objection. Misstates
11 testimony. Calls for speculation.

12 THE WITNESS: Not always. It's
13 possible.

14 BY MR. BURROUGHS:

15 Q So does Shutterstock offer
16 curated collections of photograph?

17 MS. LACKMAN: Objection. Vague.

18 THE WITNESS: Shutterstock offers
19 what we would call a collection, and it
20 would be a collection of images that might
21 be applicable for that month. So Autumn's
22 right around the corner, so probably fall
23 foliage and pumpkins and -- so it's a team
24 that specifically looks on the site and
25 finds images that, you know, catchy, eye-

1 H. SHIMMIN

2 popping, whatever, would put it on
3 Shutterstock's website. So that, in that
4 sense, a collection is created based on a
5 theme usually.

6 BY MR. BURROUGHS:

7 Q Is it fair to say that under the
8 theme that those collections are curated
9 by Shutterstock?

10 MS. LACKMAN: Objection. Vague.
11 Asked and answered.

12 THE WITNESS: It's, I guess, a
13 curated collection of available assets on
14 Shutterstock.

15 BY MR. BURROUGHS:

16 Q Okay. Let's put an exhibit in
17 front of you, Exhibit 11. It's MGC 4741.
18 Is this document familiar to you?

19 (Exhibit 11 was marked for
20 identification.)

21 A No, I have never seen this
22 before.

23 Q Have you had any experience with
24 Shutterstock's Curated Collections?

25 A No, I don't -- I don't dabble

1 H. SHIMMIN

2 too much in that.

3 Q Okay. Does Shutterstock have
4 expert curators that select photography?

5 MS. LACKMAN: Objection. Calls for
6 speculation. Mischaracterizes the
7 document. Also no foundation. This
8 document was produced to us after 9:30
9 last night before a deposition.

10 THE WITNESS: Shutterstock has people
11 who are -- put together collections. They
12 have various expertise, and that's part of
13 their job.

14 BY MR. BURROUGHS:

15 Q Okay. So is it fair to say that
16 Shutterstock has a curation team?

17 MS. LACKMAN: Objection. Calls for
18 speculation. Vague.

19 THE WITNESS: I'm not sure if it
20 would particularly be a team. I'm not
21 sure how that is structured. There are
22 people who specifically put collections
23 together. Whether that's part of their
24 only role or part of their role I'm not
25 sure.

1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q Okay. In the third paragraph
4 here it says, "Our curation team will kick
5 into action."

6 A Okay. Then I guess we do.

7 MS. LACKMAN: Objection. Calls for
8 speculation -- outside the scope. No
9 foundation that any of Dr. McGucken's
10 images were curated.

11 BY MR. BURROUGHS:

12 Q So is it fair to say that
13 Shutterstock has a curation team that
14 curates the photography it offers to its
15 licensees?

16 MS. LACKMAN: Same objection. Calls
17 for speculation. Asked and answered.
18 Misstates the document.

19 THE WITNESS: According to the
20 document, yes.

21 BY MR. BURROUGHS:

22 Q Have you ever worked with any of
23 Shutterstock's curators in your time at
24 Shutterstock? Personally?

25 A Not officially.

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2 ten or 500, it doesn't matter.

3 Q Okay. And what is the policy
4 for the timeline in which the contributor
5 who's contributed for licensure three or
6 more images that are infringing?

7 MS. LACKMAN: Object to the term,
8 "Licensure." No foundation that
9 Shutterstock engages in licensure. Calls
10 for speculation.

11 BY MR. BURROUGHS:

12 Q Go ahead.

13 A So within the lifetime of that
14 contributor's account. So if he's been
15 there for ten years and I received -- the
16 third image has a complaint against it
17 today, he'll be terminated. Doesn't
18 matter how long he's been a contributor.

19 Q Okay. Then will he be
20 terminated in 24 hours, in six months, is
21 there a time policy?

22 MS. LACKMAN: Objection. Vague.

23 THE WITNESS: Like I said, if we
24 learn that there's three images within the
25 lifetime of that contributor, he's

1 H. SHIMMIN

2 terminated.

3 BY MR. BURROUGHS:

4 Q Is that immediately?

5 A Like I said before, we run the
6 report every Monday, and then -- or if I
7 get a complaint. Let's say there's ten
8 images from the same contributor, I'll
9 just terminate him on the spot. I won't
10 wait until Monday, for example.

11 Q Sometimes it's immediately, but
12 in no case is it longer than a week,
13 right?

14 MS. LACKMAN: Objection. Calls for
15 speculation.

16 THE WITNESS: Yes.

17 BY MR. BURROUGHS:

18 Q Okay. I'm going to put a
19 document in front of you that we're going
20 to mark as Exhibit 14, STK 5329 is the
21 Bates number. Do you recognize this
22 document?

23 (Exhibit 14 was marked for
24 identification.)

25 A Yes.

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2 MS. LACKMAN: Objection to the term,
3 "Working with." No foundation.

4 THE WITNESS: Right. So he's not
5 working with Shutterstock. He signed up
6 to be a contributor, and he put his
7 location as Bangladesh.

8 BY MR. BURROUGHS:

9 Q And he was contributing
10 photographs to Shutterstock, Shutterstock
11 was reviewing them, and then Shutterstock
12 was offering them for license on its site?
13 Is that correct?

14 A Yes.

15 Q Okay. And this individual was
16 approved to be a contributor by
17 Shutterstock. Is that correct?

18 A Yes.

19 MS. LACKMAN: Objection. Calls for
20 speculation.

21 BY MR. BURROUGHS:

22 Q And Shutterstock made payments
23 to this individual of over \$1,000?

24 A Yes.

25 Q Okay. Now you'll see up here,

1 H. SHIMMIN

2 photographs, do you include any metadata?

3 A I do.

4 Q What metadata do you include
5 with your photographs?

6 A I have location, some of my
7 personal details, my website, copyright
8 notice, title, keywords. I think
9 description written by is an option.

10 Q And I assume your name is some
11 of that metadata?

12 A Yes.

13 Q Okay. When a Shutterstock
14 contributor submits a photograph for
15 Shutterstock's review, what does
16 Shutterstock do in regard to the metadata,
17 if there is any on the photograph?

18 MS. LACKMAN: Objection, vague.

19 THE WITNESS: So when a contributor
20 submits an image, the title/description
21 and the keywords are pulled in to the
22 upload process. So whatever the
23 contributor -- if the contributor had
24 added something previously -- then when
25 it's submitted, any sort of personal

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2 (information) (is) (removed) (to) (protect) (the)
3 (contributor's) (privacy.) (So) (when) (it) (comes)
4 (to) (review,) (reviewers) (can) (only) (see) (the)
5 (title) (and) (keywords) (of) (an) (image,) (and) (the)
6 (file) (name,) (which) (isn't) (technically)
7 (metadata.)

8 (BY) (MR.) (BURROUGHS:)

9 (Q) (And) (so) (other) (than) (those) (three)
10 (things,) (all) (metadata) (is) (removed) (from) (the)
11 (contributor's) (photograph) (before) (it's)
12 (reviewed?)

13 (A) (Yes.)

14 (MS.) (LACKMAN:) (Objection) (--)

15 (THE) (WITNESS:) (To) (my) (knowledge,) (yes.)

16 (BY) (MR.) (BURROUGHS:)

17 (Q) (Does) (Shutterstock) (keep) (a) (copy) (of)
18 (the) (metadata) (that) (it) (strips) (from) (the)
19 (photographs) (submitted) (by) (the) (contributors?)

20 (MS.) (LACKMAN:) (Objection) (to) (the) (term,) (21)
("Strips.") (Mischaracterizes) (the) (testimony.)

22 (THE) (WITNESS:) (I) (don't) (know) (exactly)
23 (what) (is,) (say,) (kept) (in) (the) (files.) (I) (do)
24 (know) (Shutterstock) (uses) (some) (camera) (data.)
25 (It) (looks) (at) (camera) (data) (--) (this) (is) (Nikon,)

1 H. SHIMMIN

2 (this) (is) (Fuji,) (whatever.) (But) (outside) (of)
3 (that,) (I) (know) (it's) (not) (visible) (to) (the)
4 (reviewer) (and) (it's) (not) (visible) (to) (the)
5 (customer.) (To) (protect) (the) (contributor's)
6 (privacy.)

7 (BY) (MR.) (BURROUGHS:)

8 Q (So) (it's) (fair) (to) (say) (that)
9 (Shutterstock) (doesn't) (look) (at) (the) (metadata)
10 (to) (confirm) (or) (investigate) (whether) (or) (not)
11 (the) (photograph) (that's) (being) (uploaded) (is)
12 (properly) (owned) (or) (licensed) (by) (the)
13 (submitter?)

14 (MS.) (LACKMAN:) (Objection) (to) (the) (extent)
15 (it) (calls) (for) (legal) (interpretation.)

16 (THE) (WITNESS:) (It) (does) (look) (at) (the)
17 (title) (and) (keywords,) (because) (sometimes) (the)
18 (title) (might) (say,) ("Photo) (by) (Heather)
19 (Shimmin," (when) (it) (was) (somebody) (else.) (The)
20 (other,) (for) (example,) (the) (copyright) (notice)
21 (is) (not) (looked) (at) (because) (that) (field) (can) (be)
22 (edited) (by) (anybody,) (and) (it) (doesn't)
23 (necessarily) (provide) (proof) (of) (copyright)
24 (ownership) (to) (the) (image,) (therefore) (it's) (not)
25 (looked) (at.)

1 H. SHIMMIN

2 (BY MR.) (BURROUGHS:)

3 (Q) (But if the title or the keywords
4 indicate that the uploader may not have
5 the rights, what do you do?)

6 (A) (Great question.) (The reviewer
7 will escalate the image to a review
8 coordinator and a review coordinator will
9 investigate, and if they find enough
10 evidence that it's true, that they're not
11 the copyright holder -- for example, you
12 can see the file name, and if the
13 contributor didn't change the filename, it
14 might say, "heathershimmin@pixels [ph],"
15 underscore a number, that would be
16 escalated.) (That would be a flag.) (So a
17 review coordinator will look at it, and if
18 they aren't sure, they'll escalate it to
19 the IP team, so Archer and I will
20 investigate further if a review
21 coordinator feels like they're not sure,
22 then we'll look at it.) (And then if it is
23 found to be infringing, we'll terminate
24 the account immediately.)

25 (Q) (So did that happen for any of

1 H. SHIMMIN

2 the photographs at issue in this case?

3 A I can't say definitively. I
4 don't know, because this came through a
5 different avenue. But I can't say.

6 Q And when you say, "A different
7 avenue," what avenue is that?

8 A In the account we're looking at,
9 this came through someone who was not the
10 rights holder who wrote an email in to us
11 and we looked at it.

12 Q I'm going to put a document in
13 front of you that we'll mark as Exhibit
14 17. It's STK 813 to 1138. It's a big
15 document, so we'll scroll through it and
16 we'll land on page 815.

17 (Exhibit 17 was marked for
18 identification.)

19 MS. LACKMAN: This is awfully tiny.
20 I can't see the text. Can you see it,
21 Heather?

22 THE WITNESS: Oh, that's better.
23 Thank you.

24 MS. LACKMAN: Also I know the witness
25 is in control, but do you mind scooting

1 H. SHIMMIN

2 issue in this case that were on
3 Shutterstock's site?

4 MS. LACKMAN: Objection. Calls for
5 speculation. No foundation.
6 Mischaracterizes the document.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A No, I don't.

10 Q Okay. And like the others,
11 Shutterstock hasn't contacted Hello RF to
12 ensure that they've removed the photos at
13 issue in this case from their site,
14 correct?

15 MS. LACKMAN: Objection.
16 Mischaracterizes the testimony,
17 mischaracterizes the document.
18 Mischaracterizes Shutterstock's processes
19 and procedures.

20 BY MR. BURROUGHS:

21 Q Go ahead.

22 A It's access through the API. So
23 if it's not available on Shutterstock, it
24 won't be available for license at Hello RF
25 or any of the other authorized resellers.

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1 H. SHIMMIN

2 Q Okay. But it's still apparently
3 available to be displayed, correct?

4 MS. LACKMAN: Objection. Misstates
5 the document. Misstates the testimony.
6 No foundation.

7 BY MR. BURROUGHS:

8 Q Go ahead.

9 A I don't know.

10 Q Okay. And my question was, has
11 Shutterstock reached out to Hello RF to
12 ensure that it's no longer displaying the
13 photographs at issue in this case?

14 MS. LACKMAN: Objection. That wasn't
15 your question. You can answer.

16 THE WITNESS: I have not, and I don't
17 know if anyone has.

18 BY MR. BURROUGHS:

19 Q Okay. Understood. Thank you.
20 I'm going to put up one more exhibit.
21 This will be Exhibit 35. I believe it's
22 the full page of your blog that we were
23 looking at earlier. You can scroll all
24 the way to the bottom. If you want us to
25 go slower or faster, you can feel free to

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1 H. SHIMMIN

2 BY MR. BURROUGHS:

3 Q -- Go ahead.

4 A -- I'm getting there. What Mr.
5 Ross is saying is that Shutterstock says
6 that they have a license -- they have a
7 valid license from Shutterstock. That
8 they have a license.

9 Q Okay. And in or around March
10 23, 2022, you did not advise Mr. Ross of
11 the issues with Hane Street or the
12 photographs at issue in this case,
13 correct?

14 MS. LACKMAN: Objection. Asked and
15 answered.

16 THE WITNESS: Not that I know of at
17 this time.

18 BY MR. BURROUGHS:

19 Q Okay. And does this refresh
20 your recollection as to when the kill
21 notices were sent?

22 A Kill notices were sent later.

23 Q Okay. So they were sent after
24 March of '22, correct?

25 A If I recall correctly, yes.

1 H. SHIMMIN

2 Q More than a year after you had
3 terminated Hane Street as a fraudulent
4 contributor, correct?

5 MS. LACKMAN: Objection. Foundation.

6 THE WITNESS: Yes.

7 BY MR. BURROUGHS:

8 Q I'm going to put another
9 document in front of you we're going to
10 mark as Exhibit 37. I want you to scroll
11 through this.

12 (Exhibit 37 was marked for
13 identification.)

14 MS. LACKMAN: Can you please slow
15 down? I don't see a Bates number on this.
16 Was this produced to us? No, it wasn't.
17 Okay. I'll just object to you introducing
18 this document, and I'm going to need some
19 time to read it.

20 MR. BURROUGHS: Take all the time you
21 need.

22 MS. LACKMAN: Well, since you've
23 torpedoed my meeting, I might as well.
24 Can you please scroll up to the top? Can
25 you please stop? I can't read that fast.

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CERTIFICATE OF DEPOSITION OFFICER

I, CHANYRI FIGUEROA MONSANTO, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHANYRI FIGUEROA MONSANTO

Notary Public in and for the
State of New York

☒ [X] Review of the transcript was requested.